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LEGAL ARGUMENT

BEFORE THE

SUPREME COURT OF THE STATE OF NEW JERSEY,

At the May Term, 1845, at Trenton,

FOR THE DELIVERANCE OF

4,000

PERSONS FROM BONDAGE.

BY ALVAN STEWART, Esq.,

COUNSELLOR AT LAW.

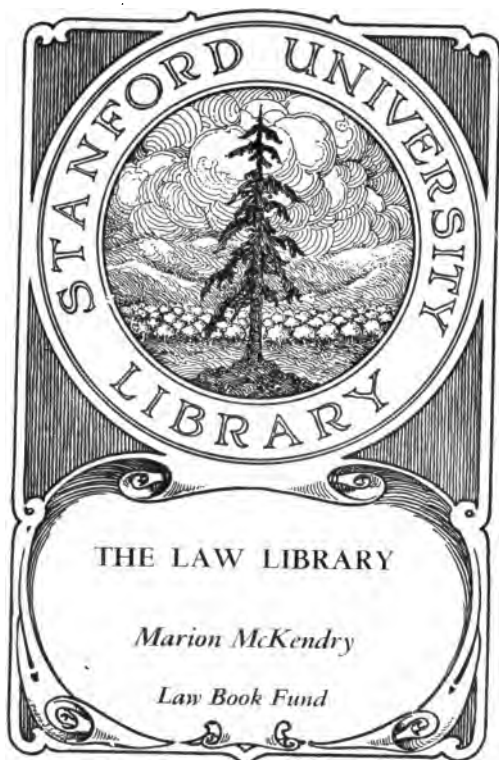
NEW YORK:

FINCH & WEED, 118 NASSAU STREET.

1845.

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LEGAL ARGUMENT

BEFORE THE

SUPREME COURT OF THE STATE OF NEW JERSEY,

At the May Term, 1845, at Trenton,

FOR THE DELIVERANCE OF

FOUR THOUSAND PERSONS FROM BONDAGE.

BY ALVAN STEWART, Esq.,
COUNSELLOR AT LAW.

NEW YORK:
FINCH & WEED, 118 NASSAU STREET.
1845.

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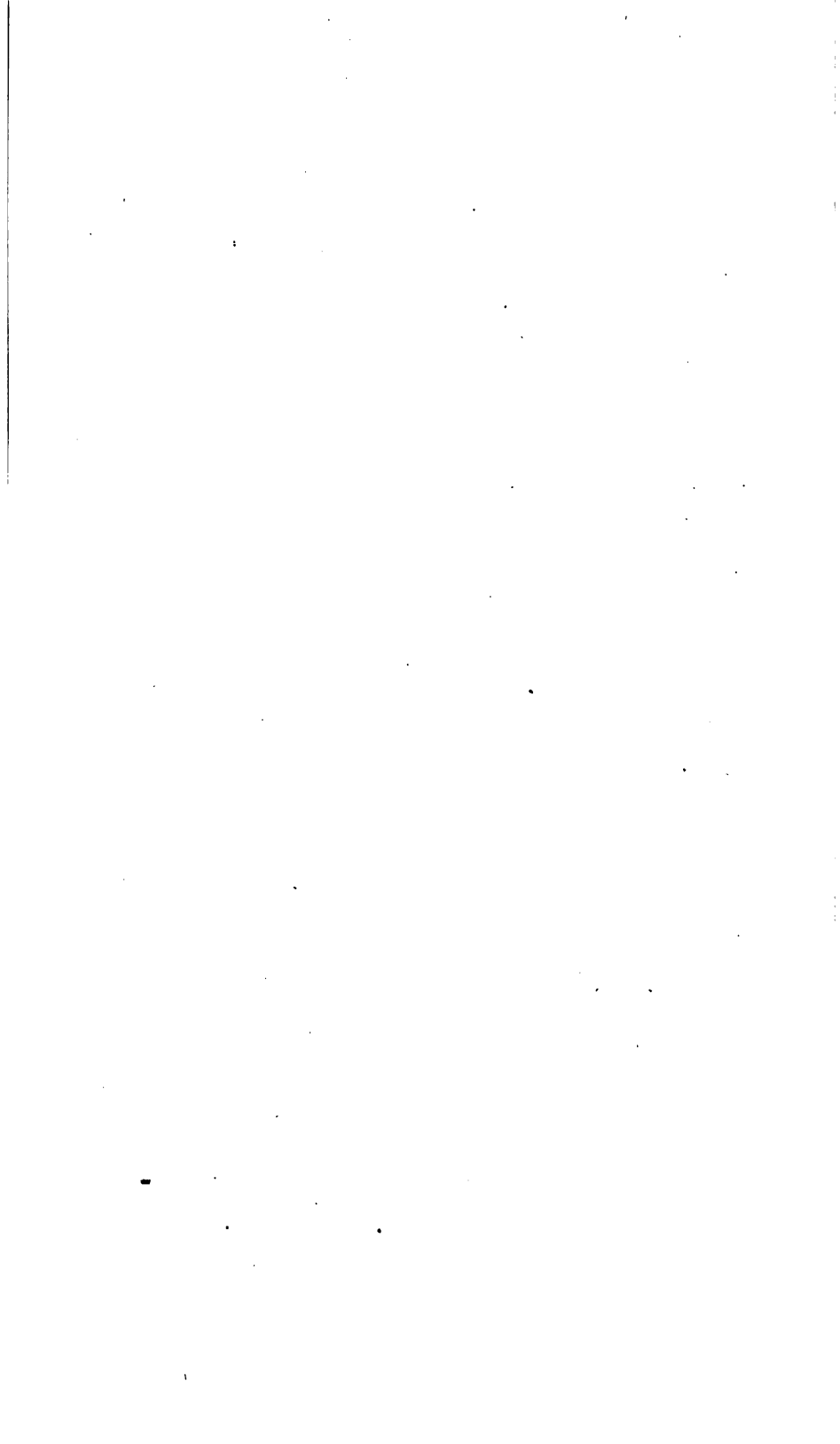
PREFACE.

THE public will not expect a preface to a disquisition on Constitutional Law, which can go far to encourage them, in the perusal of a legal argument; but when that public are informed that the argument was not to change the title to a farm, or test the Constitutionality of a bank charter, but that it was made for the deliverance of four thousand human beings from bondage, and to overthrow the Institution of Slavery in the State of New Jersey, further attempts at apology or to propitiate their kind perusal, would seem unnecessary.

Several distinguished gentlemen of the bar have been so kind as to wish to see this argument in a more perfect form than could be expected from the desultory notes of a reporter, which only glanced at some of the most important topics which formed the basis of discussion; to meet which desire, and contribute a single mite to the deliverance of my countrymen from Slavery, it is hoped, will insure the reading of the following pages.

A. S.

New York, June, 1845.



SLAVERY IN NEW JERSEY.



SUPREME COURT OF NEW JERSEY

THE STATE,
vs.
EDWARD VAN BUREN. } *Writ of Habeas Corpus.*

THE STATE,
vs.
JOHN A. POST. } *Writ of Habeas Corpus.*

Before the Justices of the Supreme Court of New Jersey,

THE HONORABLE CHIEF JUSTICE HORNBLOWER,

And Judges Associated, NEVIUS, CARPENTER and RANDOLPH.

E. P. PALMER, Esq., Petitioner for the Slave and Apprentice.

ALVAN STEWART, Esq., of the State of New York, Counsellor and Advocate for the slave and apprentice, admitted to argue these causes by the courtesy of the Court.

A. O. ZABRISKIE, Esq., of New Jersey, Counsel for VAN BUREN.

JOSEPH P. BRADLEY, of Newark, Counsel for JOHN A. POST.

These causes were argued before the Hon. Justices of the Supreme Court, at the Capitol in Trenton, on the 21st and 22d day of May, 1845. Mr. STEWART occupied about eleven hours, and the defendant's counsel five hours, during two days and an evening.

The argument in these two causes, in behalf of *Mary Tebout*, held, in the first case, as property, until twenty-one years of age, her mother being a slave, and she being 19 years of age; and in the second case, *William*, a colored man, claimed by JOHN A. POST as a slave for life, being about sixty years of age. Returns to the Writs of Habeas Corpus were duly made on Wednesday, the 21st of May, 1845, in these causes respectively, before the Justices aforesaid. These writs had been granted on a previous day, on motion of ALVAN STEWART, Esq., in open Court.

The object of those writs was to test the institution of slavery in the State of New Jersey, which the Counsel for the slave and apprentice contended was abolished, by the first section of the Bill of Rights, in the new Constitution of this State, which went into operation the 2d Sep-

tember, 1844. The defendant VAN BUREN, by his Counsel, returned to said writ, that he held the said Mary Tebout, by means of several intermediate conveyances, from a person who owned the mother of said Mary; the said mother being a slave for life, and that the said Edward claimed to hold the said Mary, as his property, until she was twenty-one years of age, she now being nineteen years old, by virtue of a Statute, passed for the gradual abolition of slavery, in February, 1820, by which all slaves born previous to the fourth July, 1804, were slaves for life, and all children born of said slaves after 1804, were declared free, but to be held by the owners of their mothers as apprentices were; who were bound out by the overseers of the poor, males till twenty-five years of age, and females until twenty-one. The said male until twenty-five, and female until twenty-one, were held by the owners, their administrators and assigns, as property, or as other slaves are, until their time was out.

The return in the case of JOHN A. POST was the same in substance, that he held the said William, a colored man, as a slave by virtue of the law aforesaid, being born before 1804. To these returns general demurrers were put in, alleging the institution of slavery was abolished, and that the returns did not state sufficient authority to authorize the defendants to hold said persons. To which there was a joinder in demurrer.

Both of these causes were argued together, depending on the same laws for their support, and for the purpose of obtaining a judicial decision, overthrowing the system of slavery in New Jersey, in all its parts. The following pages are intended to be the substance of the argument and reply of ALVAN STEWART, Esq., of New York, who appeared for the slave and servant, as their Counsel.

The first article of the new Constitution of New Jersey, of September, 1844, is entitled "RIGHTS AND PRIVILEGES."

"All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

It was supposed there were from seven hundred to one thousand slaves, and from twenty-five hundred to three thousand servants or more, whose liberties were involved in the argument and decision of these causes, as well as the institution itself.

ALVAN STEWART, Esq., arose and invoked, as he said, the kind consideration of this Court, while he endeavored to break into a new, and almost uncultivated region, to explore and investigate the long neglected rights of man to his own body and soul. The Courts of our country had sounded the depths of human learning, and all the vast stores of history, and the remains of antiquity had been overhauled, sifted and analyzed, with metaphysical sagacity, to determine with judicial accuracy, all the rights which men had to property, lands and tenements, corporeal and incorporeal. Everything in the shape of human acquisition had been again and again labored and belabored by the highest talents of the land, until learning and genius could do no more, to add to man's possessions; while the great right of *man to himself*, while innocent *self-ownership*, under all circumstances, is a great question, which has rather been grazed than lifted up, shunned than embraced, or duly considered, in all its mighty amplitude, and its solemn importance; and then only at distant periods of time, and under the greatest disadvantage in point of time, place, position and circumstance. The controversies about lands and estates, and the personal rights of *freemen*, with all the subtle ramifications of the schoolmen, of various legal questions of our age, have been pressing the highest judi-

cial forums of our land for decision, and constitute much of the drudgery of counsel, and labor of the judges. A modern legal opinion of counsel or judge is, that it is *his opinion* that he has clearly discovered what was the *opinion* of Chief Justice Mansfield, or Lord Thurlow, on this question, when Lord M., or Lord T. saw fit to express an *opinion* on this subject.

Considering the mighty questions of human liberty placed under the control of twenty-seven State Constitutions, their laws, and the Federal Constitution and acts of Congress, and the ten thousand forms in which human liberty may be abused, from the most horrible slavery, to the slightest invasion of a trespass; it seems passing belief, to be told, there is not one volume of reports, arguments and decisions, touching the great inalienable rights of man, invaded as they are, by communities, states and individuals, as a regular commerce carried on in crushed and violated human rights, assaulted in every direction, overthrown, trodden under foot as they are, at every step and angle of passing life. The attention of our countrymen seems to have been turned to the contingencies and appurtenances of our race, rather than to man, and the elevation of the race itself. Congress has shown more anxiety to protect the hats, the boots, and the coats which men wear, than the heads they cover, the bodies they surround, and the feet they enclose. That grave assembly can dispute from Christmas to dog-days, about the Tariff, Protection, Free Trade and Revenue, while a petition to abolish slavery in the District of Columbia, to give a man to himself, a wife to a husband, and children to their parents, is received with profound astonishment as a moral anomaly, and when the house has recovered from its surprise, the petition being so completely at right angles with the course of a republican Congress, that unread, unprinted, undebated, and undecided, it is ordered to lie upon the table, until the clerk removes it to its sepulchral silence in one corner of the Capitol, to rest with the other entombed memorials of a nation's dishonored humanity.

Nothing has been held so cheap as our common humanity, on a national average. If every man had his aliquot proportion of the injustice done in this land, by law and violence, the present freemen of the northern section would many of them commit suicide in self-defence, and would court the liberties awarded by Ali Pasha of Egypt to his subjects. Long ere this, we should have tested, in behalf of our bleeding and crushed American brothers of every hue and complexion, every new Constitution, custom, or practice, by which inhumanity was supposed to be upheld, the injustice and cruelty they contained, emblazoned before the great tribunal of mankind for condemnation; and the good and available power they possessed, for the relief, deliverance and elevation of oppressed men, permitted to shine forth from under the cloud, for the refreshment of the human race.

Yet these laws and constitutions should have long ere this felt the weight of judicial pressure, and their good or evil been made prominent to the men of America, and the breadth and depth of the stream of national justice ascertained, so that we might know the exact distance between our self-glorifications, or our pompous anniversaries, and the pretended magnitude of our personal liberties, as compared with the stern and inexorable mandates of judicial decrees; or what was the difference between an abstract dogma of liberty, and a practical decision of tyranny.

Alas! said Mr. S., how vast the distance between an abstraction and a practicality! Oh! when, said Mr. S., shall we see that glorious day, when the lion and the lamb shall lie down together? that day when the law, with its mercy, shall be extended to all, when none shall be so powerful as to override its injunctions, none so *low* as to fall beneath its merciful protection, defending all in their possessions; the rich man in his castle,

the poor man in his liberty, and the value of his labor, whether in the wilderness, or the city, on the highway or in the closet; let this law of liberty brace the strong man on his journey, and its precious breathings fill the lungs of the infant in the cradle.

Oh! for the glorious day when we shall have freedom for all, wages for labor, education for all, mercy to all, justice for all, and God's religion in all! Mr. S. said it was a horrid thought, that in the 19th century, there should be found educated men, who were so weak, or so ignorant, as to suppose the title to the great inalienable God-given rights of life, liberty, and the pursuit of happiness, depended upon the complexion of a human being, whether white, black, brown, red, or in combinations of these, with curled or long hair, thick or thin lips; the body is the casket, the soul, the immortal mind is the jewel. The jewels are homogeneous, the caskets may be infinitely diversified. To deny the existence of the jewel, from the caskets being more or less plain than some other we have seen (when we know the jewel is within), is not more absurd than to make a man's right to liberty depend upon the color of his skin. But, said Mr. S., such are the raw material of apologies for gross wickedness, and the villainess of the material is never improved by its manufacture. The raw material, its manufacture, the manufacturer, and the consumer of such strange productions, ought to be bottled and hermetically sealed, where they might be seen through a glass case as *certain lusus nature*, or as a calf with two tails and no head are seen in some of our museums.

In order, said Mr. S., to understand the blessings which the new constitution of this State confers on the subject of liberty, it may not be amiss to look, for a few moments, at the past ages of the world, on the subject of slavery, and see how the men of antiquity saw and treated this terrible perversion of human rights. The ancient world, before the advent of our blessed Saviour, was filled with this awful crime. All pagan lands abounded with idolatry and slavery. But the glorious new religion, wherever it made a lodgment, amidst cruel scourgings, the faggot and the flame, the block and the cross, the dungeon and the gibbet, obtained the ascendancy; and this dreadful institution fell before the mercy of the cross. From the conversion of Constantine in the 4th Century, until the 12th, Christianity fought her victorious battle with slavery, and came off conqueror and drove it from the entire regions of continental Europe, or wherever Christianity obtained a foot-hold throughout Christendom. To be sure, said Mr. S., there existed, owing to the Feudal Law, a sort of serfdom, in some countries, which was different in appellation and character from the chattel-hood of slavery. Time fails, said Mr. S., to tell how the various devices of Pope, Pontiff, Bishops, ecclesiastical councils, decrees of councils, of kings, diets and parliaments, accomplished during what is called the dark ages—this most glorious work.

Said Mr. S., but the ever-memorable year of 1492 came for ever to be reckoned the most wonderful in the history of our race since our Saviour was born,—a new world was discovered by Christopher Columbus, the grandest man of his race.

The human passions burst into a mighty flame, fed by the accursed thirst of gold, discovery, and conquest. The peaceable and inoffensive red man of the islands of the Antilles was forced as slaves to do work in the fields and in the mines; and that age of innocent red men, a whole generation of which found that mercy in death, which their Spanish conquerors denied them. The good *Las Casas*, moved by a considerate sympathy for the red man, absurdly recommended to his prince and country, to repeal slavery as to the red man who could not endure its cruelty, and in lieu, *abduct and kidnap* laborers from the burning tropics of Africa; and from 1520 this dreadful wound was opened in the side of Africa,

which has continued from year to year, and from century to century, to flow on without intermission, until this very hour. For more than 300 years has Africa been despoiled of her people by the kidnappers from the nations of Christendom, until Christendom in three centuries had made it the law of nations to rob the men of Africa of life, liberty, and the pursuit of happiness, and made and revived the extinct law of slavery, and with armed bands marched into defenceless villages on the Senegal and Gambia, set their habitations at midnight on fire, and with pistols, swords, fetters, and ropes, pursued and overtook the distracted people and bound and sent them to this continent amidst hunger, thirst, contagion, disease, and death, the survivors in the pirate's ship, and in a land of strangers, they were sold to drag out life on the plantation of the haughty, the thankless, and the cruel. By such deplorable means has this continent fought against her own prosperity.

MR. STEWART then said he had two cases in his mind, which illustrated what all knew respecting slavery, and few whose opinions were entitled to respect would dare deny them.

Said MR. S., lifting his head and turning to the north-east, directing all to look, and see what they could behold on the last day of November, 1620, on the confines of the Grand Banks of Newfoundland, Lo, I behold one little solitary tempest-tost and weather-beaten ship, it is all that can be seen on the length and breadth of the vast intervening solitudes, from the melancholy wilds of Labrador and New England's iron-bound shores, to the western coasts of Ireland and the rock-defended Hebrides, but one lonely ship greets the eye of angels or of men, on this great thoroughfare of nations in our age. Next in moral grandeur, was this ship, to the great discoverer's; Columbus found a Continent; the May-flower brought the seed-wheat of states and Empire. That is the May-flower, with its servants of the Living God, their wives and little ones, hastening to lay the foundations of nations in the occidental lands of the setting sun. Hear, the voice of prayer to God, for his protection, and the glorious music of praise, as it breaks into the wild tempest of the mighty deep, upon the ear of God. Here in this ship are great and good men. Justice, mercy, humanity, respect for the rights of all; each man honored, as he was useful to himself and others; labor respected, law-abiding men, constitution-making and respecting-men; men, whom no tyrant could conquer, or hardship overcome, with the high commission sealed by a spirit Divine, to establish religious and political liberty for all. This ship had the embryo-elements of all that is useful, great and grand in Northern institutions; it was the great type of goodness and wisdom, illustrated in two and a quarter centuries gone by; it was the good genius of America.

But, look far in the south-east, and you behold on the same day in 1620, a low rakish ship hastening from the tropics, solitary and alone, to the New World, what is she? She is freighted with the elements of unmixed evil, hark! hear those rattling chains, hear that cry of despair and wail of anguish as they die away in the unpeopled distance. Listen to those shocking oaths, the crack of that flesh-cutting whip. Ah! it is the first cargo of slaves on their way to Jamestown, Virginia. Behold the May-flower anchored at Plymouth rock, the slave ship in James river. Each a Parent, one of the prosperous labor-honoring, law-sustaining institutions of the North; the other the Mother of slavery, idleness, lynch-law, ignorance, unpaid labor, poverty, and duelling, despotism, the ceaseless swing of the whip, and the peculiar institutions of the South. These ships are the representation of good and evil in the New World, even to our day. When shall one of those parallel lines come to an end?

MR. STEWART then proceeded to the definition and origin of the word

slave. He cited the encyclopedia under title, slave, as authority. The word, according to Vossius, is derived from *sclavus*, the name of a Scythian people, called the Slavoni. The Romans called slaves *servi*, from *servare*, to keep or save, being such as were not killed in battle, but were saved, to work or yield money. A slave bred in a family was called *verna*, hence our word *vernacular*, or the slave's tongue.

A Roman slave being set free, took the cognomen of his master for his sur or sir-name, and his slave name for his Christian—hence, our surname means the name of the lord or sir. So curiously has slavery interwoven itself in the affairs of men, that all men are made most singularly to feel the disgrace of the institution in their paternal name. The Romans had those called *mercenarii*, who had been rich, but having become poor, sold themselves for a time.

The Greeks had those called Prodigals, who, having lost their estates by their extravagance, were sold to discharge their debts by law, for a longer or shorter time. Delinquents to the revenue, or unfaithful subtreasurers of the Roman Empire, were sent to the oar as slaves. But Tacitus describes the most remarkable slaves, *De Moribus Germanorum*, called enthusiasts, who were gamblers, who having staked and lost their money, goods and lands, finally staked their own bodies, and if they lost, the strong and the young lifted up their hands and received the fetters thereon, from the aged and weak, and were marched off forthwith to the slave market and sold by the winner as slaves for life. This was done under the code of a gambler's honor.

Those are the two kinds, among the ancients, of slavery, voluntary and involuntary. Some think slavery did not exist before the Flood. But Alexander Pope thinks differently, and says :

“ Proud Nimrod first the bloody chase began,
A mighty hunter, and his prey was man.”

A man has no right to sell himself, and if he had, he could not bind his posterity. A man is not allowed to kill himself.—*Blac. Book 1, C. 14. Montesquieu Spirit Laws, B. 15, C. 2, and 6.*—Both say, if a man might be taken in war and made a slave, this war-right of the captor could not extend to the captive's posterity. This alone would abolish slavery. The Romans exercised the power of life and death over a slave. So do slaveholders in the United States under certain circumstances; if the slave refuse to work, he, the master, may, by slave law, whip and beat him until he is dead, unless he submits to go to work; or if a slave attempt to run away, and the master commands him to stop, and he refuses, the master may shoot him down, and the slave laws of more than ten States say, *amen*. The Romans were very cruel, and had an Island in the Tiber, where by law, they might send *old, useless and sick* slaves to starve to death or die. It is said as an evidence of slavery's hardening of the heart to human suffering, that the elder Cato sold his superannuated slaves for any price rather than maintain them. The Romans had slave dungeons under ground, called “*ergastula*,” where the slaves were worked in chains. The same in Sicily, which country was cultivated by slaves in chains. Eunus and Athenio excited an insurrection of 60,000 slaves and broke up the dungeons.

But we are more immediately interested in the light in which our English ancestors viewed these great questions of human rights, and we have derived most of our ideas of law and liberty from that interesting source. The case of Somerset, to be found in the 20th Vol. of British State Trials, also in Long's Reports and Burrows', is one of manifold interest. It was justly said by that great lawyer and civilian, Mr. Hargrave, the counsel of the slave Somerset, though greatly aided in his brief by

that eminent philanthropist, Granville Sharp, "that slavery corrupts the morals of the master by freeing him from those restraints so necessary for the control of the human passions, so beneficial in promoting the practice and confirming the habit of virtue." It is often dangerous to the master, as exciting implacable resentments on the part of the slave.

Said Mr. STEWART, slavery communicates all the afflictions of life to its victim without leaving scarce any of the pleasures; it depresses the excellence of the slave's nature, by denying to the slave the ordinary means of improvement and elevation in the social scale of existence; it brings forth the gross, malignant, cruel, mean, deceitful and hypocritical portions of human nature, without a counterpoise or a power of suppression. The slave is always the natural and implacable enemy of the State, he owes it nothing but deadly hate.

Said Mr. S., instead of the Constitution and the laws being his shield and his inheritance, they are employed to strip him of his natural rights, of life, liberty and the pursuit of happiness, existing antecedent to all human compacts; and what should be employed for his protection and defence in the shape of law, is used for his prostration and destruction. It is the element of constant fear to the family and the State, and is therefore real weakness to the State from the constant apprehension from insurrection at home, or invasion from abroad, when it is always expected the slave will range himself in the ranks of the invader of the land. The slave has no country, no real home for which he will fight. Judge of the surprise of General La Fayette, said Mr. S., when on the first day of being introduced to the American Congress in Philadelphia, in the summer of 1777, he listened to the extraordinary request of South Carolina to be released from raising and equipping the quota of troops designed by Congress to be raised by that State as her proportion in the eventful struggle of the Revolution, on the ground if she spared that number of troops from the State, it was feared that there might be a servile insurrection, that it was necessary the troops should remain at home to restrain a domestic enemy in her own bosom. If all the States had been under the weight of slavery like South Carolina, our Independence could never have been achieved. Such States as South Carolina may bluster and threaten their brethren in time of peace with nullification and revolution, but when war comes, her power to act out of her own territory will be in the inverse ratio of the noise and threats she made in time of peace. The enemy of her own household will furnish a good market, not only for her capabilities but her courage. If the home market is the best one, she will find one at her own door, as ample as her productions may be abundant.

In the late war, about midsummer of 1814, this nation, said Mr. S., was overwhelmed with shame, grief and astonishment, at the capture and sack of the city of Washington, by a body of British troops, soldiers, sailors and marines.

The public authorities had sufficient notice of the enemy's intention, the militia of the three cities of the District, and of the surrounding counties in the adjacent portions of the old States of Virginia and Maryland, could have driven the British force into the sea, had not a report been universally circulated on the morning of the battle, and on the battleground at Bladensburg, that the slaves of the District and of the adjacent counties, from which the militia were drawn for the defence of Washington, were to rise that day in insurrection during the absence of their masters. The moment the British approached our troops, President Madison, with the Secretaries of the Departments, fled from position to position, abandoning, as all who know the ground, one favorable place after another, and finally retreated eight miles from Bladensburg to

Washington, and at last the retreat became a general rout; each man having his mind on the danger he feared in his own house or plantation from the insurrection of his slaves, rather than the immediate work of defending the Capitol of the nation. This, said Mr. S., is a perfect solution of that disgraceful affair. It was the natural consequence which the weakness of a servile population creates, and the fear in a day of adversity which it will inspire.

Mr. S., said he learned the cause of our disaster in 1818, while going over the ground of this disgraceful retreat, with a General, who was a Brigadier on that mortifying day, who assigned the above reasons to Mr. S., as the cause of this most shameful result.

Mr. S. said, John Locke declared a right to preserve life is inalienable, that freedom from the exercise of arbitrary power is essential for the exercise of this right.

Said Mr. S., in the sixth year of the reign of Edward III., 1334, a law was enacted declaring that all idle vagabonds should be made slaves, fed on bread and water or small drink, and *refuse meat*, and should wear an iron-ring around their necks and legs, and should be compelled by beating, chaining and otherwise, to perform the work assigned, were it never so vile; the spirit of the English nation could not brook this, as applied to the most abandoned rogues, and repealed the law in two years after its enactment. But nothing places the judiciary of England on higher ground, than its patient work in extirpating villeinage from England. It was an institution connected with the feudal system, and the Norman Conquest of 1060, and the other conquests obtained in previous ages, and was nearly allied to slavery, in everything but the name, so that it is supposed at one period, there was not less than three quarters of the population of the kingdom, who were either villeins regardant, or villeins in gross. The dishonor of such a state of things has been so deeply felt by thousands, who are descendants of these bondmen in England, and who now rank high in the scale of society, that there is rather a desire to conceal than reveal the odious state in which our ancestors existed; therefore, David Hume and Sir William Blackstone are very niggardly in dealing out information on an infamous and obsolete institution, so humiliating to our ancestors, and humbling to their descendants.

But, said Mr. S., to understand the terrible hardships endured and suffered by our ancestors, for many generations, and the glorious way of their deliverance by the judges of England, may furnish us with valuable deductions, which may be applied to solve any difficulty growing out of the causes under consideration, by learning what use a court may make of *law* to establish justice.

A villein in blood and by tenure was one whom the lord might whip and imprison. The villein could acquire no property except for the lord. "*Quidquid acquiritur servo, acquiritur domino.*" A villein regardant passed with the land of his lord, on which he lived as a kind of property like the trees, but might be severed and sold when the lord pleased.—*Co. Littleton* 117 a. If he was a villein in gross, he was an hereditament, or chattel real, according to the lord's interest, being descendable to the heir, when the lord was absolute owner of the soil, and to the executor, when the lord was possessor for only a term of years. The common law held if both parents were villeins, or the father only, the issue were villeins. The child at common law followed the condition of the father, *Partus sequitur patrem*; while the civil law held, *Partus sequitur ventrem*. Therefore, it was a departure from all principle, for the slaveholders of the United States, who if they inherited anything from England it was the common law, to substitute the principle of the civil law, because they

could make more money by it, and say the child in slavery should follow the condition of the mother, when the common law said it should follow the father! But why reason on a subject, when brute force and selfishness stand in the place of right reason and truth? Had, said Mr. S., the doctrine of the common law been followed, slavery from its *mulattoism*, a significance of the times, would have been in its *last quarter*. The object, said Mr. S., of drawing this all but obsolete learning from past centuries, was not to make a public parade for the sake of its strangeness; but to show in the great struggle, in past ages, between slavery and liberty, how the judiciary of England conducted itself in those encounters between the powers of light and darkness.

The Courts of Law in the British Isles, from the Conquest down, employed every intendment of humanity, every device, every fiction, in behalf of the unfortunate serf. One rule was for the court always to presume in favor of liberty; but in some thirteen States of our Union, if a man is of African descent, he is presumed a slave, until the victim proves a negative. In England the *onus probandi* lay on him who asserted slavery or villeinage to prove it. If a villein prosecuted a writ of *Homine Replegiando* against his lord, on the trial the lord had to prove affirmatively the plaintiff was his villein, and the villein, though the plaintiff, might stand still in court till that was done by the defendant. The lord's remedy for a fugitive villein was the writ *Nativo Habendo*, or *Neifty*. If the lord seized the villein by his writ of *Nativo Habendo*, the villein procured the writ of *Homine Replegiando*, or *Libertate Probanda*.

By the writ of *Nativo Habendo*, the master asserted slavery, and if the master was *once nonsuited*, he could never sue the serf again, and the villein might plead the record of nonsuit as a perpetual bar. Not so, if the poor villein was nonsuited on the writ of *Homine Replegiando*, or *Libertate Probanda*. He might sue again for his liberty, and the record of nonsuit, if made ten times or more against him, could never be pleaded or used against him. The slightest mistake on the part of the lord, or accident, was laid hold of by the court to defeat the recovery of the lord.—*Somerset's Case*, 20th vol. of Haswell's State Trials. So this honorable court of New Jersey should do, said Mr. S., under the new constitution of this State—the constitution adopted by the people in 1844. This court, in accordance with the noble example of England's judiciary, should make every intendment in behalf of your bondmen, as between the selfish and cruel demand of slavery and the ceaseless cry of liberty. Give the slave the benefit of every sensible doubt, which may cloud the mind of this Honorable court.

Sueing, or being sued by a villein, freed him. The lord's granting him an imparlance, manumitted him, or asking an imparlance of the villein did the same. Almost, said Mr. S., the last case of villeinage reported, was near the year 1600, on the accession of James I. Crouch's case is reported in Dyer. All of these obstructions thrown in the way of this sort of slavery, are most interesting legal relics of servitude, showing the meta-physical dress in which it was clothed by our subtle and ingenious ancestors. These were patterns of extinct fashions of opinions, now only to be found in the ponderous tomes of antiquity, garnered up in the library of the legal antiquarian; as the visors, steel and brass armor, of the 10th century, disclose to us the mode and appearance of the knights on the field of battle in the days of chivalry.

To establish villeinage, the villein must be proved such by two other male villeins, *ex eodem stirpe*, from the same stock, or the villein might confess in open court, being a court of record, that he was one. The female villein was not allowed her testimony to prove a man a villein. A villein was called *nativus*, as well as *villanus*, from the lord's villa, *nativus* from being found on the soil—a native. The lord, on declaring on a writ

nativo habendo, had to bring his two witnesses with him at the same instant he declared, and if he did not, the villein went for ever free. A man might plead bastardy, in himself, father, grandfather, or ancestor, and if the plea be true, that alone manumitted the villein, for the *filius nullius est filius populi*. For if there was a link of illegitimacy, it set the line of descendants from the bastard free, because the lord could not show that he was the son of his bondmen in particular.

Another plea of the villein was called *adventiff* by the Norman French Law, showing that a person was born off from the *manor*, and if true, it set the man and his descendants free.

Said Mr. S., Sir Thomas Grantham, about the year 1684, bought a monster in the East Indies, and brought him to England as a show. The monster had growing on his breast, the entire parts of a child, except its head. The monster being carried through the kingdom as a show, was baptized, and he brought a writ of *Homine Replegiando* against his master, and was set free.

Said Mr. S., I have done with villeinage in England,—such in a dark age was the view which learned jurists and judges took of this important matter. The judiciary in many countries have been, at different periods of civilisation, the last branch of human government, to feel the force of popular opinion, in behalf of liberty, or employ its power in accelerating the march of freedom, or the overthrow of strongholds of fortified oppression. It is not, said Mr. S., a matter of complaint that the judiciary is the *hold-back power* of the State, or conservative in its character, but with all that, it has a high mission to discharge on the part of liberty. And the English judiciary have shown the world during those dark ages what they understood to be contained in their commissions, touching England's bondmen, even, under the iron rule of the haughty Norman and his imperious descendants, who, by rights of conquest, and by the subserviency of supple parliaments connected with the agency of the Feudal System, had reduced four-fifths of the inhabitants of England to the condition of villeins regardant, and villeins in gross, attached to the soil, or the person of some grandee of the realm, as slaves, whom their lord might scourge, sell, or transfer with the soil, or at will.

The judiciary of England became the Temple of Mercy to which these unfortunate bondmen cast their imploring eyes for relief through a succession of five cruel centuries, during eighteen generations of men. The courts of English law during this long period, employed all the subtleties, fictions, and presumptions, in which the English Law abounds, in behalf of the liberty of these grossly injured men, so that at last, the sublime moral spectacle was presented to this world, of many unrepealed statutes, and the common law still in full force in favor of villeinage, while the bloody useless fetters hung on the tyrant's dungeon walls, but the last bondman of the three-fourths of the population of a mighty kingdom was enfranchised from captivity by force of England's glorious judiciary alone. The king, and iron-mailed barons, the land owners, and man-holders, were foiled, and their prey taken from their power by the resolution of the judges, who, being determined, did administer *justice through the law*.

Montesquieu says that Aristotle, in reasoning to sustain slavery as derived from war, cites authorities from barbarous ages, and appears in this matter as unphilosophical as he does in the nature of the thing. The war-power to be the source of a right, when the war is prosecuted for no other motive except the value of the captive, is as rational as to give the robber title to his spoil, because he had the courage to take it—making a crime the most bold and daring, the parent of a civil right. Behold bleeding Africa, for three hundred years her bleeding side has flowed, and

yet flows on, unshaken by the humanity of the Nations. Behold this accursed crime which has crawled up with beastly impudence, and enthroned itself as one amongst the laws of Nations. *Laws of Nations!* What was this law of Nations? That Christendom had a common right to plunder, burn, murder, enslave irredeemably, and make property of the inhabitants of that ill-fated continent, in and through all coming generations of their posterity. A *law of Nations!* that all law, justice, mercy, humanity, should be suspended, as to one quarter of the globe; a *law of Nations*, that piracy, murder, fraud, arson, kidnapping, ravishment and stealing, should be considered lawful as an injunction of the law of Nations, to be honored and obeyed. A law of Nations directly at war with every other law constituting that code; a law of Nations, striking justice down, and sending it into eternal banishment from the world, subverting the decalogue of God, blaspheming Omnipotence, brandishing the powers of perdition in the face of the Allseeing, calling this bold defiance of the Almighty, the law of Nations! Out upon such infinite perversion, such inexpressible criminality. Russia, Prussia, Holland, Austria, England, France, Sardinia and the United States, in the last forty years, as it regards themselves, by treaty and legislation; have abolished their respective portions in this frightful law of Nations, while Spain, Portugal and Brazil, three of the basest kingdoms of earth, are now retrograding into the darkness of barbarism and infamy, and without competition are now almost the exclusive proprietors of this law of Nations and its abounding criminality. Look at Spain three hundred and fifty-three years ago, as she stood on the day of Columbus' discovery, head and shoulders above the powers of Europe. Conquest, avarice, slavery and idleness, which she introduced to the New World, re-acted on her, and in our day, she has been stripped of her mines, her provinces, viceroyalties, kingdoms and one half of a continent, and is now reduced to the Island of Cuba, with its crimes of flowing blood, slavery, idleness and avarice; these relatives have been punished in so signal a manner, in the case of Spain, by Him who rules the destinies of Nations, that to deny it, is a proof that our ignorance is only surpassed by our infidelity.

The Court will pardon me in these remarks, which in the first instance may appear remote from this question, yet when we consider the character of the human mind, they will all be found to bear on the great question in the Constitution of this State. What do we mean by liberty and independence? Infinitely absurd to say, a man has power even in himself, by contract, to dispose of his own liberty and all the rights he possesses. Society has claims on him, his wife, his children, and his God, which he cannot cancel by selling himself to another. Yes, coming generations have a voice in the question. He has no more right to sell his body than he has to commit suicide, for, by so doing, he passes from manhood to thing, or chattel-hood, and becomes a piece of breathing property. The great rights of manhood are not given to us by our Creator, to give, sell, and barter away. The powers of life, liberty, and the pursuit of happiness, cannot be resigned to a power inferior, to that of the one, from whom they have been received.

As to consideration that might be given for those God-inherited rights, described in your Constitution, said Ma. S., as unalienable, who is rich enough to buy them, who is able to make title to them? Suppose that some Croesus owned this continent, and the mines of Golconda, and should offer them to me to become his slave, according to the laws of South Carolina and Louisiana; at the same instant, he executes for the consideration of my person, a deed of the continent and mines to me, and I execute to him a deed of my body. _The purchaser of me, by the operation of the

slave laws, instantly becomes repossessed of what passed to me by grant, under the maxim that the slave and all he hath, or may find or acquire, belongeth to the master, therefore, I the slave would say the consideration having failed, and by operation of law, my master having become re-seized of his continent and mines, I am free again. Thus, it would be found impossible to make a bargain resting upon equity, for the sale of one's person, as the whole subject revolves in a circle of never-ending absurdities, justice leaving the parties where it found them: man with equal success having attempted to quadrature the circle, create perpetual motion, and make a contract for the sale of a man, by his own agreement, on consideration of value for value received by the slave upon the principles of slaveholding law! If a man could not perform the act of making himself a slave, how could another do it for him, or a state or a government, without doing an act repugnant to that law of nature spoken of in the first article of your new Constitution? When, said Mr. S., I applied for these writs of *Habeas Corpus* some days since, to one branch of this court, it was remarked by one member of the court, that this case would require great consideration from its effect on the towns of this State, as it might subject said towns to the maintenance of worn-out, aged and infirm slaves, in the shape of paupers. That contingency is possible, said Mr. S., but forms no ground against awarding to the bondmen, that constitutional justice, so long withheld by the consent of these towns, as well as the avaricious masters. It was argued in the Somerset case by Mr. Dunning, the Counsel of the claimant of Somerset, that if this slave was set free by the judgment of the court, there were then at large fourteen thousand slaves in England, belonging to gentlemen in the West Indies, who, for their own convenience, had brought them to England, and valuing them at £50 per head, they would amount to £700,000, or \$3,500,000. What was the memorable reply of Lord Mansfield? It was, "that a man's natural relations go with him *everywhere*, his municipal to the bounds of the country of his *abode*." And in answer to the suggestion of a loss by the proprietors of the 14,000 negro slaves in England, said Lord Mansfield, "*we have no authority to regulate the conditions on which law shall operate.*" We cannot direct the law, the law must direct us."

So, said MR. STEWART, the *argumentum ab inconvenienti* should not apply in this case. If these slaves have been worn out by the consent of the public, if that public have folded their arms in silence, and witnessed the robbery of these men, from year to year, of their earnings (which might have supported them in the evening of life), it is right they should support them when they can toil no more in the enjoyment of their just liberty. For it is always dangerous for men to see liberty struck down in others, and because they do not taste its bitterness personally, passively to look on without resistance. It will sooner or later strike back on themselves. That man is not worthy of liberty, who will not fly to the rescue of his brother when he sees his freedom struck down or assailed. Our liberties are always invaded when the humblest individual is deprived of his, without our making all the resistance within our power. At the time of the argument of the Somerset case, in 1771, the world was full of slavery, especially the West Indies, and the colonies of this continent—it was tolerated in all. But behold what may be done by the indomitable perseverance of one man, if that man be Granville Sharpe. He was a gentleman of small means, but of a great heart, and had for some time made the study of human rights a subject of great consideration. He had read, thought, and written in their behalf, and was the prosecutor who interested himself for Somerset, the slave of one William Stuart, a West India planter, and prepared much of the brief of Mr. Hargrave, and obtained the writ of *Habeas Corpus*, returnable in the court of King's Bench, at his

own expense. The court heard the argument patiently the live-long day, and decided against the slave, on the authority of a case in 1749, in Lord Hardwick's and Lord Talbot's time. Nothing discouraged Granville Sharpe; at the next term he brought up Somerset a second time, and the question was so important, the court heard the argument a second time, and decided as before against the slave. Poor Granville Sharpe still contended that a slave "could not breathe in England," and having spent months in deep study, upon the law of England, though a layman, he brought up Somerset for the third time before the court of King's Bench which had Lord Mansfield for its chief, who did not meet poor Sharpe and his counsel with a rebuke for his unconquerable fanaticism and obstinacy, nor did the court throw down the common impediment to the march of mind and further consideration, by saying "*res adjudicata*," "*res adjudicata*!" No! where human liberty was concerned, or the great rights of self-ownership staked upon human reasoning and judicial determination, Lord Mansfield was not in haste to say "we have decided against human nature." The cause was argued a third time for a day in Westminster Hall, and Granville Sharpe had, since the last argument, descended into the deepest wells of English liberty and brought up a draught of the waters of life, liberty, mercy, and law, so pure, that when it was commended to the lips of the judges, they were made wise, the scales fell from their eyes, and they saw in its length and breadth the mighty truth beaming on the forehead of justice herself,—"that slaves cannot breathe in England," and the light of that day has shone on with increasing strength and beauty, until we can now say, that the sun which never sets upon the realms of the British Empire, beholds in his circuit through the heavens, no slave to crouch beneath her vast illimitable power.

But oh! what shall we say of the sublime humanity of Lord Mansfield and his compeers, who were not afraid to confess they had been wrong, and had the magnanimity to say it before a slaveholding age? This day saw the longest stride which British greatness ever took on the highway of human glory.

Would to Heaven, said Mr. S., that all courts might imitate the illustrious example in administering justice in the sublime humility, which dignified the court and exalted our kind, as in the case of Somerset! The great principles established in the Somerset case awakened the philanthropy of England, and put forth its strength in 1783, '88, '92, '96, '97, and finally, in 1806, was successful in the abolition of the African slave-trade by Parliament. Wilberforce, Pitt, and Fox were foiled again and again, in Parliament, the theatre of their eloquence, and seat of their power, but justice finally prevailed. This was the first great blow struck for the man of Africa, in three hundred years from the beginning of his American and West Indian enslavement. But from that day, the vindication of his rights has been onward. Congress, in 1774, recommended the *ceasing* of the African slave-trade in December, 1775, but it was not abolished until Jan., 1808, by a law passed the March before, in 1807. Three acts of Congress were passed in 1814, 1820, and in 1824, increasing the penalties against transgressors, until it finally declared all who were engaged therein, were pirates, and subject to the pirate's doom. An act of Congress passed in 1787, declared involuntary servitude, or slavery, should never exist in the North Western Territory, comprising the present States of Ohio, Indiana, Illinois, Michigan, and the Territories of Wisconsin and Iowa. These early acts of national legislation show which way the mind of the nation pointed at this time.

A slave is a rational human being, endowed with volition and understanding, like the rest of mankind, and whatever he lawfully acquires

and gains possession of, by finding or otherwise, is the acquirement and possession of his master.—4 *Dessaus*, 266. 1 *Stewart Rep.*, 320—s. p. A slave cannot contract matrimony; their earnings and their children belong to the master.—*Slave-Law*. Indians are held as slaves in New Jersey.—*Halstead's Rep.*, 374.

Behold the shameful injustice of the Law of Slavery.

If it be found by a jury on inspection, that the person claimed to be a slave is white, the claimant must prove him a slave or he will go free; but if the jury find the person to be of African descent, the law of slavery presumes the person a slave, by whomsoever he may be claimed, and the burden is thrown on the alleged slave to prove a negative, that he is *not* a slave.—*Wheeler's Law of Slavery*, 22. The owner of a female slave may give her to one person, and the children she may thereafter have to another!—*Law of Slavery*, 2. A slave cannot be a witness before any Court or Jury against a free white in the land for the greatest injustice. This is one of its most horrible features.

Look, said Mr. S., to the case of an alien-white-child. Suppose her to be the daughter of parents of the lowest class of those who migrate from Ireland to America, and that these parents should die on their passage over the Atlantic, leaving to the mercy of New Jersey Laws, and the good people of Perth Amboy, their daughter, twelve years old, who cannot read or write, barefooted, destitute and friendless. Under your laws, the Overseers of the poor bind her out, to the Mayor of Trenton; she has lived with this rich, popular and influential citizen but one little month; when by violence she is dishonored, by her master, the Mayor. Is he safe from the retributions of justice? Is she deprived of her oath? No. She comes friendless and lonely, and knocks at the door of your Grand-Jury-room. Humble and feeble as is that knock, it is quickly heard by the acuteness of humanity's ear. She enters the vestibule of the great temple of justice, and immediately the majesty of the entire law of the land, not only of New Jersey but of this vast Empire, stands in its mighty invisibility around for her protection, ready to be revealed in its power. She is invited, on oath, to tell the story of her wrongs, the indignant Grand-Jurors listen and believe, and find a bill against the Mayor; she goes and comes under the law's broad shield. This haughty man is found by the officers of the law, is arrested by its power, and brought before a Court to plead to this indictment. He is tried; a second time, she, the friendless, comes and tells the tale of her dishonor; confiding justice, humanity, loving and honoring men believe her story; he is convicted and attempts to fly the power of the State and Union, which is by that child's oath already set in motion, and will prevail against money and mobs of rescue, all of these cannot save the big criminal from the vengeance of the law; to the Penitentiary, for ten long years, he must and does go; yes, the merciful majesty of the law shines gloriously on the head of the friendless foreigner. This is being born free and independent by the law of nature, under your Constitution.

But not so of the poor injured slave, man or woman, native born though they be, however cruel or terrible the wrong inflicted on them, by their owner or other free man, the slave is not to be heard to tell his or her story, however true, before any human tribunal in the land against a free white person. Is this being free and independent by the law of nature? Is this possessing the safety and happiness described in the first Article of the New Constitution, which your organic law declares to be the portion of all, of woman born? Slavery imports perpetual obligation to serve another! Does that look like being free and independent?

Slavery, said Mr. S., is so abhorrent to all justice and mercy, that all the intendments of law and justice are opposed to it; so that the legal

writers of slave countries say that it can only exist by force of positive law. The *lex scripta* must be its foundation, and that I think you no longer have. The *lex scripta* must be the source of all of its mischievous power, which one human being can exercise over another, by making a fellow-being his slave, his chattel. The foundation of slavery which sprang up in our colonies, had, as a general rule, nothing but the barbarous custom of a few inhuman planters, in its origin, which custom was one within legal memory, and ran not back to that unsurveyed point of antiquity, transcending all human memory, where its source was hidden in the night of bygone ages. It has not that common law authority for its support, which was supposed to be handed down from generation to generation, in the libraries of judges and lawyers, as copies, as some conjecture, of obsolete, worn-out and extinct statutes. As the soul survives the body, so it is supposed these customs called common law, are the souls or spirits of departed statutes, the tomb-stones and graves of which can no longer be found. *Cineres perierunt.* But their imperishable souls still remain to guide and direct us on the journey of life, and as far as they speak in the language of authority over this land, they forbid in trumpet-tongues, the existence of this vile institution of slavery.

Institution of slavery! Institution of horse-stealing; institution of gambling, and the institutions of highwaymen, sound equally sensible, to a just and philosophical thinker. But slavery is within the memory of men, so far as its advent to the New World is concerned. We track it from the middle passage to this hour, from its first unholy foot-print at Jamestown to the last ones made this day by those now held in New Jersey; and if the Court finds a well-grounded doubt as to the authority for this institution existing, which is trying to nestle down on our soil, and taking rank with your scientific, religious and agricultural institutions, then give humanity the advantage of that doubt, and put it to death. As between strength and weakness, power and imbecility, if a strong doubt arise in the minds of the judges, the mercy of the law says, decide in favor of imbecility and weakness, "those who are ready to perish," let their blessing come upon you. Every intendment is in favor of natural rights, until the contrary doth most manifestly appear. If the new Constitution has seriously drawn in question the villainies and crimes of this complicated institution of wrong, then this Court, acting within the spirit and scope of American institutions, are bound to give the slave the benefit of that doubt and set him free. A solid doubt should secure emancipation. But thanks to the freemen of New Jersey, the court is not obliged to look through clouds to see the clear sky of Liberty beyond, for its Constitution, in its first section, asserts in the strongest form of the English language, the explicit principles put forth in the Declaration of Independence, when our country was introduced into the family of nations, by which we declared the great self-evident truth to be, that all men were created free and equal, and possessed of certain inalienable rights, among which are life, liberty, and the pursuit of happiness, which is the proposition of the Constitution of New Jersey, expressed so distinctly, that *cavil* itself looks on in humble silence, and hangs his head in mute despair. For these great man-rights, said Mr. S., as I have said, there is no buyer, no seller, no market. They are a trust confided to man, by his Maker, in order to place him at the head of the created life, and give him dominion over it; and his rank he can never sell, lose, or forfeit, so as to take his station as property among the quadrupeds and animals. In the fall of Adam man never fell so low, as the slaveholder would have wished; for, according to the law of slavery, the poor slave in the disastrous fall of the first transgression "which brought death into the world, and with it all our woes," the slave fell out of his

manhood into chattel-hood, and fell on till he lost his wife, his children, and in the amazing descent as he further fell, he lost all his property, and all he should thereafter acquire; and as he further fell, he himself became property, and brought not up on solid ground, until he could say to the neighing horse, on the one hand, "thou art, as property, my brother," and to the lowing ox, on the other, "thou art my equal, my peer." Such is the slaveholder's fall, but this is one of man's pit-falls, and not one of his Maker's. Said Mr. S., he had an argument, which the Court might regard as novel, which he wished to urge—that each and every branch of our government, state or national, were under a most solemn covenant with one of the great nations of the earth, to use our best endeavors to abolish slavery, in every part of our country; and we have been living under the weight of that solemn and disregarded undertaking for the last thirty years. Said Mr. S., I understand a treaty made by the treaty-making power to be the solemn and paramount law of this land, and if I am right in its construction, the duty is imposed upon our nation, as I may well urge it even upon the judiciary of this State, as a co-ordinate branch of the government, to employ all the power it constitutionally may possess by its decision, to fulfil this engagement of the nation.

The article, said Mr. S., to which I refer, is the 10th article of the treaty of Ghent, of the 24th December, 1814, made by the United States of America on the one side, and his Britannic Majesty on the other. Lest there should be some attempt to cavil, and pretend this article of the treaty had reference to the African slave-trade, I may be allowed to say there is not one word in the treaty, except in the 10th article, which touches or relates to the subject of slavery, and it is an engagement relating to slavery as to the traffic generally in the two countries, for each had abolished the African slave-trade under the most tremendous penalties long before 1814; therefore the treaty referred to slavery generally in the two countries. The words of the 10th section of the treaty of Ghent are as follows:

"10th Article, Whereas the *traffic* in slaves is irreconcilable with the principles of humanity and justice, and whereas both his Majesty, and the United States are desirous of contributing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object."

Signed 24th December, 1814.

("Done in triplicate.")

"GAMBIER,
HENRY GOULBURN,
WILLIAM ADAMS,
JOHN QUINCY ADAMS,
J. A. BAYARD,
H. CLAY,
JONATHAN RUSSEL,
ALBERT GALLATIN."

United States Laws, 1st vol., 699.

This treaty, so long dishonored on our part, has been most faithfully respected and obeyed on the part of Great Britain. They immediately began to adopt means for the subversion of slavery as a system in the West Indies. To be sure the violence, disorder, and Lynch-law of the slaveholders of the West Indies defeated the kindness, and deferred the approaching justice of the English nation for some years. It was astonishing to see the impudence of the West India planters, threatening dismemberment of the empire, revolution, and treason, as often as the mother country originated a measure in any degree preparatory to emancipation. These contumacious slaveholders did all in their power to frighten

England from her high purposes, 1st, by asserting that the slaves would cut their masters' throats if emancipated; 2d, that the slaves were so brutified, they would all starve to death, and die from laziness, and could not take care of themselves; that the slaves were thieves and drunkards; that the whites would have to abandon the Island if they were set free, and lose their estates; in fact that slaves were not men, and had no souls. Amalgamation, house-burning, and universal desolation would be the first fruits of such procedure.

The Moravian, Baptist and Methodist ministers exposed themselves to great rage from the slaveholders in attempting, as Christian ministers and good subjects, to preach the Gospel to the slaves, and aid them in information in furthering the objects of the mother country. Baptist and Methodist meeting-houses or churches were torn down and burnt, and these blessed ministers were in constant peril of losing their lives, and were occasionally imprisoned and banished from their homes and families. In fact, everything, which is said against emancipation and abolitionists in Mississippi, Georgia, and South Carolina, was said in the British West-Indies thousands and thousands of times by the press, resolutions of public meetings, the Island Legislatures, and the voice of man, against emancipation and British abolitionists; but on the passage of the great Reform Bill of England in 1833, about 500,000 new law-makers or voters were added to the old Parliamentary constituency of England, and when this fresh stream of popular power flowed, it rose so high, that on the bosom of its flood it carried into the New Parliament men deeply sympathizing with the great principles of justice, and one of their first acts of legislation was to declare slavery abolished in the West Indies, paying £20,000,000 sterling to the slaveholders, and giving them, the masters, six years more of the services of the slaves, so that emancipation would not take place until the first of August, 1840. This apprenticeship-system, regulated by a most complicated law, with especial justices to stand between master and apprentice, proved, if possible, more bitter than slavery itself. Nothing could have been more unfortunate, or fraught with greater injustice to the colored people.

The master's avarice and cruelty arose in proportion to the shortness of the time he could exercise his despotism. The special justices intended for the slave-apprentice's friend, eat sumptuous dinners with the planter, and decided controversies in his favor. The humanity of the government in the apprenticeship was entirely defeated by the greediness, cruelty, and avarice of masters. The horrid flogging, the treadmills, and other instruments of slaveholding vengeance and torture were in full play during the probationary state. The mother country had been overreached in paying twenty millions of pounds sterling to see the objects of their solicitude so shamefully treated. The mistake of the home government was in supposing it possible to engraft a system of apprenticeship, education, and a preparation for freedom, on the old tree of slavery, and in having confidence in those brutal, cruel, and avaricious slaveholders, who, with their twenty millions of pounds, and six years of labor, only hated the poor slave the more as his liberty advanced day by day in his chains. Finally in January or February, 1838, the British minister wrote to the Governors of these Islands, requesting them in the coming spring and summer to convoke those insular legislatures and ask them forthwith to abolish the remaining two years of the apprenticeship system, if the islands wished for the future good will of the slaves, or in fact, the protection of the parent country, in case of insurrection. This stringent measure brought the obstinate slaveholders to their senses. The West India Island Parliaments were convoked, and the final acts of emancipation passed, to take effect simultaneously on the 1st August, 1838, except the

are life, liberty, and the right of acquiring property. What, can a slave have safety, or acquire property? he who is nothing but a chattel, a piece of property himself, can he acquire safety? No; of all the innumerable murders committed by white men and women upon the slaves of the south (and there is no day goes by in which there is not more than one murder in each slave State, on an average), not a single white person has yet been executed for the murder of the colored man. The white is frequently hung in the slave States for stealing slaves, but not for killing them. Oh, sum of all human villainies, let the curse of God rest upon it, let every wind of Heaven be charged with its destruction, every rising sun be its destroyer, the rolling seasons its executioner!!

Said Mr. S., slavery is the exact converse of every proposition contained in the first article of your new Constitution.

Slavery throws down every human right in the market to the highest bidder. If slavery or semi-slavery, in the shape of children of slaves in this State continuing to be slaves, males until twenty-five, and females until twenty-one years of age, and this operation is to pass under the name of being born free, and persons forty-one years old and upwards to be retained as slaves for life, and slaveholders are to stand asserting their wicked power, then the first great section of your Constitution is converted into a vapid and senseless abstraction. Shall your Constitution be withered by the power of slavery? Shall this Constitution stand gilt with the gold of high pretension, while within it is full of ravening and dead men's bones? Shall this slave institution continue to exist in hostility to so plain a provision? This frightful institution claims to exist by the apology of some since the 2d of last September, even since this Constitution went into operation, without a platform on which to place its accursed feet. Said Mr. S., the best foundation I can see for slavery in this State, at this time, and the length of time it should continue, should be the amount of time it would take the people of this State to recover from their astonishment at its inexpressible impudence.

The institution of slavery is the converse proposition of the Ten Commandments, the essence of injustice and meanness in its most compact form; and it would seem that no nation not struck down by a mortal paralysis, would wait a moment before rising and striking down the monster, the first instant they discovered his seven heads and ten horns emerging from the forlorn regions of "Eldest Hell."

Said Mr. S., which shall stand—the great written, organic law of liberty, or the unwritten and inexpressible villany of slavery? Which shall stand—the natural God-inherited rights of life, liberty, property, safety and happiness for each human being in New Jersey, or that of an institution which subverts every object for which a good Constitution was ever made?

A Constitution *ex vi termini* imports a covenant made by the whole people, with each person, and each person with the whole people, to protect and defend their God-inherited rights of life, liberty, property and safety from violence and invasion. A Constitution is made for the defence of human rights and not for the destruction; a Constitution is the highest evidence of man's weakness; and to combine society's strength, for the defence of each individual. How is it possible that a Constitution, whether of this State, or of the United States, which were created on purpose for the protection of life, liberty, property and safety, can exist and be entitled to the name, without overthrowing every institution villany or stratagem created or made, intending to cheat man out of life, liberty, property, safety and happiness?

The men who framed the old State Constitution of New Jersey in the

year 1776 were not such hypocrites as to stamp that Constitution with the protection of human rights. No, they said nothing on that subject, for they knew there were no inconsiderable class of the population of this State, who were wedded to the insatiable desire of appropriating the labor of others, without compensation, by compelling negroes, mulattoes, mestees and Indians, to work for them for nothing, and make chattels or property of their persons, their wives and children,—yes, of those human sinews as a marketable commodity, men were to be degraded and forbidden, under penalties of thirty-nine lashes, from wandering from their masters' homes on Sunday, for the infliction of which stripes, by the order of a justice of the peace, a constable did and yet does receive from the master the sum of \$1 for performing the brutish service. To add to all other ignoble acts on the part of the State, was a provision forbidding emancipation of the slave, if forty years old or more, for fear of the distant contingency, that this freedman might become a public burthen to the township, by being a pauper in his old age, and rather than subject the towns to that they preferred to let the man and his posterity remain in slavery. Such was the gross inhumanity of the age; thus cheap were human rights held by the people of this State at large. Gross inhumanity to the master himself; it took away his *locus penitentiae*, his space of repentance. And if slavery is not abolished, this infamous provision is still in full force. The reason, said Mr. S., why slavery was not abolished by name in Massachusetts and New Jersey is to be found in this, that the conscious shame of the fact restrained the framers of those Constitutions from immortalising their own disgrace by admitting slavery's previous existence, in and by its distinct abolition. They therefore put it to death by suffocation by the hands of liberty, without a name, hoping the judiciaries would attend its funeral and burial, and for ever remove its unsightly corpse from the sight and smell of men with as little parade as possible; and further hoping a generous posterity would disbelieve their early public history, and consider it as apocryphal and slanderous of their illustrious ancestors, as the Constitutions of these States do not so much as name so great a moral blemish on their historical fame.

Said Mr. S., by the statute of this State (which he contended was repealed by the 1st section of the new Constitution) passed February, 1820, all children born of slaves after 1804 were to be free, but belong as servants, and be held as apprentices, who are bound out by the overseers of the poor to the owners of their mothers, their administrators, executors and assigns, males till 25, and females until 21. These persons were property in every sense of the word, until their time expired; they are purchased and sold in private and at public auction, pass under the insolvent acts and bankrupt acts, the same as oxen and horses. What is the difference between this Mary Tehout and her mother? Nothing, until Mary has passed 21 years of unrewarded toil. She is called a servant, she is said to be born free, now but 19, and has been sold three times. The Southern States call slavery involuntary servitude, or persons bound to service by the laws of the States. The domestic institutions of the South, the patriarchal institutions and the peculiar institutions of the South—by such soft hypocritical use of words, do they mean to make the English language a partner in their guilt, by using it as a cloak to conceal the hideous visage of that frightful monster, whose mouth is filled with spikes, and cover her face with iron wrinkles, with burning balls of fire for eyes, whose every hair is a hissing serpent, whose fetid breath would kill the Bamon Upas, whose touch is ruin, whose embrace is destruction, who is fed on blood, tears and sweat, whip-extracted, from unpaid toil—her music is unpitied groans of broken hearts, of ruined hopes, and blasted expectations.

Away, said Mr. S., with such artifice to shield deformity, by those

cruel and wicked States, boasting of their republicanism, and rights of man. Even New York and Pennsylvania once held persons born free, whose mothers were slaves, the males till 28, and females till 25, as slaves. Terrible nick-naming of human rights, as in bold derision of them. These New Jersey servants are property, in its base sense, slaves for years, the parents deprived of all jurisdiction of their offspring, all direction of their education, and paternal tenderness; the law confining these poor servants, and obliging them to live with those who have owned and abused the mother who bore them, and are still continuing to hold their parents until death as slaves. The master can sell this servant and horse together. This servant-woman at 15, and the male-servant at 18, contract marriage, and when the woman is 19, and man 22 years of age, having three little children, the father is sold to one end of the State, and the mother to the other; their little children left in the street, the marriage relation broken, the paternal and maternal relation dissolved; these little ones not to see their parents for two years or more; the husband cannot see his wife or little ones, nor the wife her husband or babies for two years to come. Call you this being born free? The man is deprived of his wife, and the wife becomes a widow, and children orphans, according to law, to satisfy the claims of certain old slaveholders in this State! Is this being born free? This sort of being born free, "is keeping the word of promise to the ear to break it to the hope." This looks none like respect for the law of nature, by which we are born free and independent. We can never honor or respect the new Constitution, till we feel there is meaning, power, vitality, in those blessed words of justice, truth, mercy, freedom, safety; and further, feel that there are no birth-impediments, or interest of others in the use of our bodies, inconsistent with our own happiness. Each individual should be left to fulfil the object of his mission to this world in the best way he may; society should not load him with burdens for the benefit of others, but should give him every facility to run his race of existence, with dignity to himself, and thus truly serve the ends of society and his own creation, in passing from the great eternity of the past into the illimitable future. Here, Mr. S. said, we are not left in the dark, as to the meaning of the words of the New Jersey new Constitution, for it is almost an exact copy of the first section of the Massachusetts Constitution of 1780. Here Mr. S. read the first section of the Massachusetts Constitution in these words.

"Article 1st. All men are born free and equal, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."

Here Mr. S. asked Mr. ZABRISKIE, counsel for the claimant of Mary Tebout, if he contended there was any difference between the two sections of these Constitutions? Mr. ZABRISKIE replied, he did not.

The New Jersey Constitution has in the 10th Article these words, "The common law and statute laws now in full force, *not repugnant* to this Constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the Legislature."

Further, Mr. S. said that he relied on a portion of the Constitution of the United States for emancipation, by this Honorable Court, to wit, the Magna Charta portion, where it asserts "that no person shall be deprived of life, liberty or property, without due process of law."

Mr. S. said that the case of *Winchendon v. Hatfield*, 4th Mass. Rep., 123, is the case of one Edoin Landon, in relation to the question as to which of the towns should support him, he having been a slave in Massachusetts,

and sold eleven times, enlisted twice in the Revolutionary army, the second time for three years, his master receiving his bounty and his wages,—also, 4th Mass., 539. Chief Justice Parsons decided in this cause that slavery had been abolished by the first section of the Massachusetts Constitution, as had been decided in formerly unreported cases. This is legal authority, in effect, on the very words of the New Jersey Constitution, 1st article; Massachusetts being the same in substance, as admitted. Need I say Massachusetts has shed from the lamp of her Judiciary as pure, bright and steady a light as any Court in the new world, and has done her fair share in elevating the science of the law. I repose with great confidence upon this authority; it covers the whole controversy.

The case of the slave—*Med. 18th Pickering*, 193, known under the name of *Commonwealth vs. Thomas Aves*, presented within the last half dozen years this same great question collaterally. The argument was elaborate, and opinion of Chief Justice Shaw luminous.

The Chief Justice Shaw says, Massachusetts in 1641 abolished slavery, except of *captives taken in lawful war* or guilty of crime. But slavery grew up in Massachusetts, and in 1703 an act was passed in that colony, imposing restrictions on the transmission of aged and infirm slaves; and by an act of 1705, a duty was levied on the importation of slaves, showing slavery in full force until abolished by their Constitution of 1780. The Chief Justice, in this case, says it is now well established law that slavery was abolished by the Constitution of 1780, and before the adoption of the Constitution of the United States, slavery being *repugnant* to the principles of justice, of nature, and the declaration of rights, which are a component part of the Constitution of Massachusetts. Slavery, said he, crept into Massachusetts by force of custom existing in the West Indies and in several other States, encouraged by the mother country (miserable apology better than none, even in Massachusetts).

Chief Justice Shaw says, "Slavery is a relation founded in force and not in right; existing where it does by force of positive law, and not recognized and founded in natural rights." Slavery, he says, "is contrary to natural rights, to the principles of justice and humanity." He then says, "Bond slavery cannot exist in this Commonwealth, because it is contrary to natural right, *repugnant* to the Constitution and law, designed to secure the liberty and rights of all persons who come within the limits of this State, as entitled to the protection of law."

But what case can I have stronger than the opinion of Chief Justice Marshall, himself a slaveholder? Borne down by slaveholding construction as he was, still his innate integrity triumphed over cultivated wrong, and compelled him to define slavery as contrary to the law of nature, for the definition of slavery by the civil law, showed it an institution contrary to the law of nature, which law of nature New Jersey has adopted. In case of the *Antelope*, 10th Wheaton, 120, the Chief Justice Marshall says, "That slavery is contrary to the law of nature will scarcely be denied; that every man has a natural right to the fruits of his own labor is generally admitted, and that no other person can rightfully deprive him of those fruits and appropriate them against his will, seems the necessary result of that admission." Chief Justice Marshall quotes the definition of slavery in the Latin from the civil law, which, with his own opinion, would seem to put the question in this cause for ever to rest. It is this, "*Servitus est constitutio juris gentium qua quis Domino alieno CONTRA NATURAM subicitur.*" Slavery is an institution by the laws of Nations, by which one is subjected to another man, as master, *contrary to nature*. Slavery strikes down and repeals, if it could, the law of nature referred to in the 1st article of your Constitution; what can be stronger and more complete? said

Mr. S. Here Mr. STEWART gave way for an adjournment until 3 P. M. for dining.

The court being present at 3 o'clock, P. M., Mr. STEWART resumed by saying, Has any lawyer the courage to say that the legislature of New Jersey could create the institution of slavery to day in defiance of the new constitution? Perhaps most, if not all, would say No. Why could not the legislature enact such a law so as to create the relation of slave and master? It would be correctly answered, and would be by all, it would be *repugnant* to the new Constitution and its first section. Do not we discover that a law sustaining slavery is equally repugnant to the new Constitution, whether passed ten years before it, or ten years after it? and that the repugnance is not a question of past or present time? If it is repugnant, it is equally so in the one case as the other,—“it is so odious nothing but positive law can sustain it,” says Lord Mansfield.

Mr. S. said that he confessed himself to have much respect for a *being* so highly honored as man by his Maker, a being created in the image of God, who showed at all times the grandeur of his descent, and the illustriousness of his lineage by that great unimpeachable record written upon his countenance sublime, by the finger of God, which no poverty, sorrow, or crime, could erase: its marks of origin were open to all, read of all, and should be comprehended by all. In the first place we must look at the immense natural wealth, or God-given possessions, which belong to the meanest man, who prints the green earth, with his foot, or drinks from its waters, and renews life every moment from the unbought atmosphere—is fanned by the wings of the wind, cheered with the eye-possession of the universe; yes, his every-day existence could not be sustained, at a less expense than the fitting up of two worlds, for his accommodation, the earth and sun; the bread he eats, the wool, the flax, and cotton he wears, is warmed into life by rays of light from the sun, sent over ninety millions of miles in profusion, without stint, each ray having its definite office and distinct commission to aid to life, strength and joy, a single human being. If there were but one man on this globe, these vast structures of two worlds must be reared in all their architectural grandeur and fitness. This globe must revolve around on its own axis every twenty-four hours, and shoot along upon the vast plane of the ecliptic, at the inconceivable rate of sixty-eight thousand miles per hour. Man perishes, if the globe were to revolve around the sun at the rate of thirty-four thousand miles per hour; man could not live in these regions with a year of seven hundred and thirty days, with the unbroken severities of a double winter, or the scorching heat of a protracted summer.

The outlay of Almighty power, which sends this noble earth careering round the sun with such prodigious force, and brings it back to the same point, in absolute space with infinite precision, with the punctuality of God, is a portion of each man's inheritance; and all the powers ever displayed by man, exerted by beasts, felt from winds, or overwhelmed by tornadoes, or moved in tempests, or lifted or sunk by earthquakes, swept by tides, or driven by inundations, put forth since the morning of creation, would not furnish a sufficient force, to propel our globe on its everlasting journey, a single day. Yet for man these high demonstrations are made, to fit him up an abode with the finish of Omnipotence, commensurate with his every want, it is his God-inherited estate; and were the poorest man on earth to exchange that estate, for the power of Bonaparte, when all Europe shook beneath his tread, and trembled at his power, this poor man would be undone, by the exchange; the property is too great for any one to buy it, of another; this is the benevolence of Heaven to his honored creature, man. When each man's God-inherited estate is reckoned and computed, though possessing nothing else, and com-

pared with that of any other man's God-inherited estate, they are equal; and if one possess a million of pounds, and the other no money, still when their whole possessions are considered, one has one hundred and the other but one hundred and one. This proposition or statement will for ever vindicate the goodness of Heaven, and show the absolute equality of all men, if considered possession-wise.

Therefore it seems to me, said Mr. S., the Declaration of Independence, in asserting, that all men are created free and equal, is true as a proposition, and is not a rhetorical flourish, but a sublime estimate, no less grand than true, when we refer to the vast possessions of each human being; and that any accidental variance by the acquisitions of one, of more wealth than another, does not disturb the great result any more than the dust which may fall upon one of the scales shall change their general equipoise.

All men are created equal, and shall a being of such amazing dignity and immense possessions, of such grand lineage, be made a slave? God forbid. Equality, life, liberty of locomotion, the rights of acquiring happiness in every way we see fit, not violating the rights of our brother man, or the edicts of Heaven, with the God-inherited estate, constitute what your constitution and that of Massachusetts and the Declaration of Independence, describe as rights *inalienable*. Is it not so? What kind of a deed, said Mr. S., must that be which should attempt to convey my right and title in the wind, atmosphere, earth, and my share in the power that propels this ponderous globe around the sun?—my title to the exhaustless fires and light of that great luminary, and of those rays which might fall on me or on the earth and produce my raiment and food? Is there not deep and philosophical truth in asserting the *inalienability* of rights like these, so essential to man's existence, and his everlasting accountability, to the Father of all, for his abounding munificence, with which man can invest no other being, or divest himself. Can it not truly be said that a being who is born to such great possessions, is born free and *independent*? The greatest blot on American character is, to have been deluded by slaveholders into a belief that those great words expressed by the men, who wrote and adopted the Declaration of our Independence, were mere abstractions and the flourish of oratory, where they declared the great self-evident truth "that all men are created free and equal, and are possessed of certain inalienable rights, among which are life, liberty, and the pursuit of happiness," and that the same were meaningless. These truths are self-evident, and why? said Mr. S. They are evident in every breath of air we respire through our lungs, every step we take, in every object we behold printed on every tree, written on every cloud, bursting forth in every falling drop of rain, reflected in every ray of light, by which the universe is warmed, and in glory lit up, and by the succession of day and night, summer and winter, seed-time and harvest, in fact, its self-evidence is stereotyped in eternal beauty upon the earth, the sea, the mountain, the valley, upon the moon, the sun, and stars of heaven. This constitutes the great record of ever-during *self-evidence*, that all men are created free and equal, and are possessed of certain inalienable rights, &c.

Said Mr. S., this rises to a moral, if not a mathematical demonstration, and that a great nation should, so far as individuals, forget the dignity of their origin, the vastness of their inalienable possessions, and should hunt for arguments to force their debasement and search for reasons to *undervalue* such a being as man, especially in a great *selfocracy*, where each man is a sovereign, is among all strange things, one which would exceed belief were we not met by the strange phenomenon at every turn of human affairs. Had we incorporated the Divine sentiments of our great Declaration into our minds, as an everlasting first-principle, and lived under the sway of its glorious dominion, no slavery would then have disgraced

our magnificent country ; no half cultivated, forlorn and deserted sections of Slave States, would have told the world their melancholy tale. No *coffed* gang of slaves would have dishonored our nation, driven from State to State, for sale. No, our prosperity, riches, glory and moral elevation, would have presented so imposing an example of man's capabilities for his own advancement, that king-craft aristocracies and all of that coarse mode of working, taxing and governing men, as family-jobs, would, long ere this, have been thrown into the rear of the camp of human progress, and new forms of self-government would have succeeded, in which the governed should have been the governors, and the interest of the governed would have prevailed, in the true advancement of the human race.

We, said Mr. S., have terrible penalties to pay, for abandoning principles so glorious, so wise, of which we had a full view, and by saying, most shamefully, the Declaration of Independence is a formula and not serious, it is the poetry of excited minds. By thus forsaking these great truths, certain and as practical as the Decalogue, we fell back into the arms of a low, base expediency, and *relived* the forms of crimes and follies of former ages, holding these sublime truths as abstractions, fitted only for the meridian of Heaven, with angels for their operatives, to carry them out, while we fed ourselves upon the husks of former absurdities, rejecting truth, holding it too beautiful for practical use.

Said Mr. S., will not this Court set the nation the shining example of doing right, on this question, by acting up to the full measure of their judicial and moral power ?

Said Mr. S., a nation may lose its liberty in a day, and not miss it in an hundred years ; this nation lost its true liberty, the clear light, the first moment the great words of the Declaration of Independence ceased to be honored and respected as household, every-day truth, the fundamental rules of action, as the political and moral mathematics of the nation.

Although we make several hundred volumes of fourth of July orations, poetical self-glorifications and boasting eulogiums for the home-market yearly, in which the most beautiful descriptions are given of the dress and form of liberty, as a wonderful unknown goddess, and amuse ourselves in describing her altar, the costliness of her sacrifices, and the riches of her perfume, and the curling smoke of her incense ; if in the everyday intercourse of man with man, of courts of justice with causes, in expounding the doctrines of the great declaration and of legislation, in framing new rules of action, we should with one consent, have asserted that in the Declaration of Independence and other national and State Constitutions containing the same thoughts, that liberty was sincere, in declaring the freedom and equality of all men, and the inalienability of the rights, of life, liberty and the pursuit of happiness ; for not so doing, we have lost liberty, though we do not miss it ; we have only liberty's casket, but the jewel is gone ; we are playing and satisfying ourselves with forms when the substance has departed. We make the loud acclaim, we fire the cannon of salutation, crackers burst under our feet, our toasts may be drank in three times three, in the wildest uproar of animal excitement ; still these demonstrations are worse than senseless, because they make us think we are true believers in liberty and the divine dignity of man, while we are only high-heeled hypocrites and fanatics, spinning in concentric circles, like brain-turned dervishes around an abstraction of liberty, being neither flesh nor spirit, being the great *indefinable*, our adoration increasing with our ignorance, until the beatitude of our worship is made complete in the perfect *idealess*. Still for a pretence we make long speeches about Republicanism and Democracy, while we have nailed and crucified, in and through our colored brother, Liberty on the cross. We have so long been absent from *true* liberty, that we should require a for-

mal introduction before we should dare address her, for she is not that tawdry dressed cyprian bearing her name, who had sold her charms to demagogues, pimps, panders, pirates, buccaneers and slaveholders, whip in hand, who have declared that slavery is the chief corner-stone of our republican institutions; while the clergy of the south have most impiously averred slavery to be a Bible, God-honored, Christian institution to be kept. Shameful impiety and desecration of the fountain of Eternal truth!

Said Mr. S., the Court will pardon me while we look for a moment at the sublime teaching of that wonderful and holy book the Bible, so often hugged in to uphold piracy at the expense of the Eternal's justice and man's happiness. The Almighty has done a thousand-fold more, to express his infinite abhorrence of slavery, than of all other crimes and offences against his law. He has suspended the laws of nature and in one instance of time, smote two and a half millions of people with death, and caused the sea itself to retreat before the fugitive slave, and made, as predicated on these amazing exercises of power, a direct revelation of himself, and immediately caused our revealed religion to be produced, to express his everlasting detestation of a crime which would unthroned Him, and crush his creature man, and place him beside the beast of the field. Said Mr. S., our Maker destroyed the first edition of mankind. In the second emission and publication of our race Egypt became the school-master-nation of the human race, and the great instructor of mankind. The nations of the earth, on camels and dromedaries, came, in the infancy of antiquity, to Egypt, to exchange their rude materials and ignorance for the Egyptian works of art and knowledge. In fact, no opinion was considered worthy of general acceptance, by the surrounding barbarians, unless it had an Egyptian endorsement, and their wise men's stamp and mark upon it.

It appeared the Israelites in near 400 years had increased to two and a half millions of people, as would seem from the number of men spoken of in their Exodus. The Pharaohs had a slave market for centuries. The poor Jews had become slaves of the most distressing type. They had their overseers, their distinct tasks; they were scourged, and had every mark of human debasement and slavery inflicted. The day of their deliverance was in an age, in which the passion for public structures, imposing in their magnitude, wonderful in their display of high-wrought efforts of genius, constituted the chief employment of their kings, and great men, for centuries. The poor Hebrews had often laid their petitions before Pharaoh through Moses and Aaron, asking to be permitted to go into the wilderness, and worship their God. But Pharaoh, as a slaveholder, stood between this people and their conscience, and refused to let them go. Slavery strikes down the rights of conscience always, for there is not a slave in the United States, who is informed in any reasonable degree in the Christian religion, who does not remain in slavery, contrary to the plainest teachings of his own conscience. The Almighty having warned the Egyptian government of the great crime of holding men in bondage, was determined, in the early ages of mankind, to settle the question of his infinite abhorrence of slavery, in a manner so elementary and signal, that the stamp of His finger-marks should remain unerasable through all coming ages. For slavery overthrows the *will* of the victim, and the claim of the Almighty to the adoration of his creatures; and no power can get in between God and man, and interfere on this subject, unless it is slavery. Slavery breaks down the will, volition, and choice of its victim; the slaveholder steps in between the slave and his Maker, and says, Oh, slave, talk not of conscience, your religion, or your God; do my will, or die; my will is your law, and not your God's; my will you must obey, or die. Slavery always disputes our Maker's

supremacy; warning after warning, miracle after miracle, had been lost upon the obduracy of Egypt's king. One morning, as the population of that kingdom of 15 millions of people arose and looked at their beloved Nile, lo! and behold, it was one vast river of blood, from the cataracts where its tumbling torments of blood fell in mighty roar, and pursued its sweeping course for 600 miles to its seven mouths, where the Mediterranean, receiving its tribute from this ancient servant, blushed for twenty leagues around, at Pharaoh's impudence. The stranger from afar, the traders, seekers of knowledge, and the citizens, stood that livelong day, and wondered at the bloody Nile; and as reasons were asked and given, I think I hear them say, the reason why the Nile runs blood is that Pharaoh holds the Hebrews as slaves, and the Hebrews' God demands their release, and shows his anger and his power at Pharaoh's refusal. The stranger would carry this news to the utmost bounds of living man, saying, one entire day I saw the Nile run blood, to express the abhorrence of the Hebrews' God against the crime of slavery. Again, the heavens were darkened at noon by the gyrations of armies of locusts, which shut out the sun, and they consumed the vegetation of this fertile land; men cried for mercy, and in a few hours this army of destructive locusts was carried on the wings of a strong west wind into the depths of the Red Sea, not one left. The Egyptian and the stranger knew that the Hebrews' God had done this, to cause these poor slaves to be delivered from the mighty monarch's cruel power. On a certain other day the obstinate Pharaoh refused, after many promises, to let the poor Hebrew slaves go free. It is noon; the burning power of a June sun strikes the land; anon, all eyes in Egypt are turned to a black cloud rising out of the west, over the Lybian desert.

Said Mr. S., this was the first thunder-storm in Egypt, and the last, for it neither rains nor hails in Egypt, owing to the great Lybian desert of sand on the west, and the Arabian desert on the east, as philosophers suppose. It skirts the western heavens, and the terrific clouds raise themselves higher and higher; men turn pale; anon the low and solemn tones of thunder are heard; men tremble, and say it is the voice of the slaves' God,—in a moment the flashes of forked lightning play with infinite quickness, men fall on their knees and declare it is the flashing of the angry eyes of the Hebrews' God at the Egyptians' cruelties. The clouds rise to the high altitude of noon; the lightning, the winds, and roaring thunder send consternation into the hearts of affrighted men. It appears like night, nature in agony, men fear to speak, and believe they are on the eve of doom; men and beasts hide themselves in extreme terror; the thunder makes the earth tremble from pole to pole; the pyramids rock from their deep foundations, the rains descend, the hail beats the earth, fire and ice leap from the clouds, while the lightning strikes down the trees, plays round the pyramid tops, smites the sphinx, and runs along upon the ground, men in agony praying for deliverance; Pharaoh and his court lie prostrate in the palace, the earth seems shaken out of its place, and all nature in convulsions. The king implores mercy, and the Father of all hears, pities and delivers, the faithless king and people, and ere the sun went down, that storm and desolation had for ever gone by, and the last cloud sunk below the horizon, in the Red Sea, while the beautiful sun rolls down the western heavens, smiling in mercy from and beyond the dark solitudes of the interminable Lybian sands. This storm, all men knew, was an evidence of God's displeasure at slavery. But Pharaoh would not let the people go.

It is in Egypt, and is midnight, when the young wife, but two years married, awoke and placed her hand on the shoulder of her youthful husband; he was as cold as marble, he would not awake at her mournful

cry—he was dead, he was the first born of his parents. She arose in wild despair, she lit a flambeau, and looked at her little babe on the mattress; the fixed smile was there, rigid in death, never to be relaxed; *he* was the first born of his parents; she flies to her father's and mother's bed in the next room, she awakes her father, but none but the archangel can arouse her mother from death's sleep, most profound; she was the first born of her parents. She sends her man-servant to her neighbor for help in this awful hour; the servant enters the neighbor's, a light is there, wailing and horror meet him. The aged father of the second house was the first born of his parents, and is dead, and the infant first born is also. No contortion, no groan was ever heard of all who fell in a single instant, on that dreadful night; they lay with all the peace of eternal sleep upon them. The servant finds another servant in this second house of death, they go out, they hear the survivors' wail, and see the baleful torch lit up in every house around; they ascend a tower on the banks of the Nile, high above and all around as in a moment for forty miles, as far as eye can measure light upon the earth's dark face, the beams of the death torch of that direful hour from all directions strike their wretched eyes. The lamentations were loud and long; and when the morning sun arose, the angel of death for long hours had been gone from the abodes of man and beast, and there was not one house in all the land of Egypt in which there was not one dead, or about two and half millions, or one sixth of the people, or a life of one of Egypt's slaveholders had been taken, for each Hebrew slave *detained*. No mistaking the power and will of the God of the bondmen longer, and the affrighted Pharaoh and his court cry to these slaves, "up and be gone, or we are all dead men." The funeral, the most terrible in time, then followed. Nothing like these deaths or funerals, in the history of our race. The fugitive slaves had marched to the north-east and reached the Red Sea, and were in great fear, reposing on its banks between two mountains, the one on their right, and the other on their left. Solemn hours! As they rested we may feign that young Hebrews climb to the mountain tops, and saw the rising clouds of dust on the south-western edge of the heavens. That army is led on by Pharaoh's generals, of chariots and cavalry, the notes of trumpets fell upon their ears, and the young men cry to their friends below, "They come! they come! we hear their trumpets on the plain!"

Then the desponding fugitives cried, "Were there no graves in Egypt?" The night came, portentous; a mighty cloud rested between the slaveholders and the trembling fugitives. On the side next to the poor slaves, the cloud beamed as from a pillar of fire, all light, the smile of heaven. On the other side of the cloud the pursuing slaveholders saw it all dark, lugubrious, presaging to them the horrors of their last day. This was another finger-mark of Divine power. The morning lowered, and in clouds, to these sad and impious slaveholders heavily brought on that day whose end they would never see. The trembling fugitives stood looking nine miles across the intervening Red Sea, whose waves broke in melancholy murmurs at their feet. Despair was on every face. When Moses spoke, "stand still and see the salvation of the Lord," another finger-mark of Omnipotence was made, and Moses stretched out his rod over the Red Sea, and anon a long line of subsidence of the waters appears. Every fugitive eye saw it. Then the re-flowing of waters from that central line, the piling of waters follow; the waters ascend and pile, ascend and pile, until the naked bottom across appears with perpendicular water walls of great height, by Omnipotence held up, and probably one mile wide is left like a clean beach. The fugitives pass down on this untraveled road, and finally division after division rose upon the further side. At length the weak passed up, the cripple climb the bank,

and lo! there see those little orphans pull themselves up by twigs, and that poor old man on his crutches, they help pull him up—they are all up and over. Now rises the wildest, grandest, and most sublime music which ever burst from human lips—the fugitives' song! The headlong vindictive slaveholders, burning with rage, thirsting for revenge, follow on the fugitives' track into the sea; and as they were at the central depths of the Red Sea, gravitation was permitted to re-assert her ancient law, when down came these mighty mountains of waters to their ancient bed. Pharaoh and his haughty hosts expired in the centre of a miracle. For forty years the Almighty fed these poor fugitive slaves directly from His own table.

Said Mr. S., the God of Heaven, as in mercy to man, that he might never again commit the atrocious crime involved in slavery, caused Mount Sinai to quake from its deep foundations, and amidst the thunders and the lightnings the Almighty, with his own finger, wrote the tables of the law, his ten eternal orders, which is most eminently anti-slavery in character, that the crime which had shook Egypt to its foundations might never occur again for want of a Divine prohibition. This was the decalogue, "Love the Lord thy God with all thy heart, mind, and strength, and thy neighbor as thyself." This command obeyed, destroys all the slavery in the world. What slaveholder can kindly love his slave unless he manumits him?

The preface to these commands, in the sixth verse of the fifth chapter of Deuteronomy, "I am the Lord thy God, which brought thee out of the land of Egypt, and from the house of bondage."

"Honor thy father and mother." No, says the slaveholder, I will sell your father and mother, you must obey your master.

"Thou shalt not kill." I will kill, says the slaveholder, if it is necessary, by flogging to obtain submission; or if the slave will run from me when I tell him to stop, I will shoot and kill him, and Southern law says, amen.

"Thou shalt not commit adultery." I will commit adultery, and break the marriage covenant between my slaves, and compel them to marry over when my interest will be promoted, or separate man and wife by sale, or purchase and make them marry again.

"Thou shalt not steal." I will steal, and appropriate, says the slaveholder, all the man hath, all he can earn, and the *man himself*, when my interest can be promoted thereby.

"Thou shalt not covet." I will covet that man's or that woman's body, and I will possess myself of them, and appropriate them to my own use, says the slaveholder.

Said Mr. S., look at the condescension of the Almighty. He made these poor fugitive slaves, the Librarians and Custodians of the revelation of his will to mankind. Slavery treads this revelation under foot, and quotes the Bible to prove slavery, when there is the most incontestable evidence that there never would have been a revelation in the decalogue, but a the finishing stroke of those awful wonders and miracles, on the faith of which our religion rests, all originating, converging and terminating in that great fundamental proposition, that God infinitely abhors slavery, because it supplants his direct authority over the will of His child, and throws His child, with an immortal mind, made in his own image, into the category of brute-beasts, thus for ever overthrowing the fundamental relation of God to man, of man to his neighbor, and of man to himself. To vindicate the character, power, and justice of the Supreme, and bring man home again to his true relations, was well worthy of a display of such awful power, introducing Himself as God to the ancient world.

Mr. S. said there was another proposition which he wished to glance at in passing. That was the Constitution of the United States, for he con-

tended, were he before the King's Bench, in Westminster Hall, he would there insist, and he believed with entire success, that there was not a slave in New Jersey, or in any slave State, who had been deprived of his liberty according to law. I mean slaves as they are generally and at large, and not those who have been convicted of crimes; and therefore there is not a slave, if you admit him a person, as slaveholders contend, but must be discharged by a judge or a court, on being brought before said court on the ground that he has never been deprived of his liberty by due process of law, according to the Constitution of the United States. That record must be produced, originating in a decision or an indictment of a grand jury, and the finding of a petit jury, and the pronouncing of judgment thereon, by a court of competent jurisdiction. This, Sir Edward Coke, and Judge Story on Sir Edward's authority, in his *Commentaries*, 440, says is the meaning of due process of law at common law, as used in *Magna Charta*. But I, said Mr. S., am willing to reduce the character of the court, and even strike out the petit and grand jury from the instrumentality—and then I say that “due process of law” means a court or some judicial personage, one or more making a court, who have adjudicated the man to be a slave; and if that record cannot be found, the man must go free, or the individual must not lose his liberty without due process of law. That record cannot be found in this land. Will any man pretend that plantation and cart-whip discipline is due process of law? Will any pretend that being deprived of the right to learn to read, or write, as in some of our States, under the penalty of twenty-five lashes on the naked back of the teacher and the taught, is due process of law? Yes, for the mother to teach her child to spell the name of the Saviour, for the second attempt, mother and child are to be whipped one hundred lashes; for the third offence, the punishment is death. Is this the due process of law, named in the Constitution of the United States? The pursuing of fugitives with blood-hounds, cannot be the due process of law of the Constitution?

The separation by sale of husband from wife, and wife from husband, and children from both, to suit the convenience of the master, cannot be due process of law? The being born of slave mother, on a slaveholder's plantation, cannot be due process of law? The being torn away from home, kindred and friends, and sent by the middle passage to a slave auction in South Carolina, and sold on the boards into hopeless bondage, cannot be due process of law?

Is not slavery a punishment or an infliction on men beyond the track of the common misfortunes of mankind, of sufficient magnitude to have it left to the adjudication of some mortal man, in the shape of a justice or judge, adjudicating a man into the great drag-net of slavery? For, we find it takes the strongest judicial power in the land to get him out. Slaveholders claim him under the word “person” in the Constitution, because they say, there is no other word by which they can denote slavery. The word person, I have, in this argument in relation to due process of law used in the slaveholding sense, which is, after all, downright per-
version.

The word person, in the Constitution of the United States, means a human being possessed of natural rights of life, liberty, and the pursuit of happiness. The word person means a human being in the fullness of his natural rights, and nothing more. The Greeks, Romans, and English, whether using the word in law or in common parlance, mean this, and nothing more; and you can legally no more express the idea of a slave by it than you can that of a King. A man who is a slave according to slave law, has lost his *personage*, if I may so speak, and has passed into chattelhood, or thinghood, and all the rights of person are annihilated, or

in a state of suspended animation, until the pure air of Liberty inflates his lungs again. The Constitution of the United States is an Anti-slavery document, in its general spirit and tendencies; and under other auspices and circumstances would have been called a great act of universal emancipation, and have set every slave free in the land, being paramount law, without doing the thousandth part of violence in construction which has been done by a slaveholding interpretation, by which it has been made into a slaveholding document, to create the horrid institution by re-enacting the slave laws of the two States of Virginia and Maryland, thereby covering the two sections of the District of Columbia, in creating and regulating by territorial laws, slavery in eight of the new States, five of which, Florida, Louisiana, Mississippi, Arkansas and Missouri, were not a portion of the United States or its territories at the adoption of the Constitution of the United States. The Congress of the United States under slaveholding dictation created slavery, therefore, in Kentucky, Tennessee and Alabama, a portion of our territory at the adoption of the Constitution; and in the other five States the nation purchased the territory and created the institution in them, as territories, and the Congress then brought these five slave States into the sisterhood of the republic. And now we are told slavery is a State-institution and is beyond the reach of any power of Congress, for its extermination; that is, that Congress has power to create and fasten this infernal institution on a territory, but has no power to abolish it anywhere, after it has enacted it once into existence, either in its territorial or State character; it has no power to lop, restrain or eradicate slavery from a State or territory, but is bound to foster and nurture it with parental care, as one of the *patriarchal, domestic and peculiar institutions* of the south. Permit me to assert, as it regards these States, that Congress had no more power to create slavery there in the beginning, than it had to create an autocrat in either of those States or territories, in whose hand and his heirs, all power, legislative, judicial and executive, should be centred for ever with full power to sell or dispose of the bodies of all the people or inhabitants who should or might come within the bounds of his territory or State. For the power exercised in the case of slavery by one half of the inhabitants, over the other, is precisely the same in degree and kind as that described, only the number of the autocrats is increased. Each autocrat has a less number of subjects, but the power exercised is precisely the same in extent, and in relation to those on whom it operates, is the same precise autocratism, as though there was but one despot. Now I deny that Congress has lawful power to do any such thing.

Many persons run to the Madison papers published in the last few years, to ascertain the meaning of the framers of the Constitution, who met in Philadelphia in 1787, as a mere committee of the nation, sent out to report to the people the form of a Constitution for their adoption in the summer of 1788. I deny in any event, the right to resort to this mode of interpretation, to contradict the noble and glorious text of that document; but supposing this a correct mode of getting darkness into the room to show the light, still it is not applied at the right point. Thirteen State conventions were held in the year 1788, by the authority of their respective legislatures, to adopt or reject what had been framed, by a committee-convention of the nation, as a body of draughts of the form of the Constitution, who had been sent to Philadelphia, during the summer of 1787, to do that very work; not to adopt that Constitution, but to report the form of one, to the people of the States.

In the summer of 1788, the people, in their thirteen State Conventions, by the constitutional number of nine, adopted this Constitution; and if this rule of interpretation now sought to be adopted, could be made ap-

pllicable anywhere, we should have to go to the *adopters*, and not the framers. What, and how did the *adopters*, the people, understand this instrument when they adopted it? Did they understand it in any sense different from what it imports on its face? Where are the secret intentions, private understandings, those implied guarantees and curious fanciful compromises of those thirteen Conventions of *adopters*? Have they ever come to light except in some long speech of some Southern slaveholding orator? How come the descendants of those slaveholders of 1788 to be made the special depositees of all those secret guarantees, compromises, and implied understandings, in behalf of slavery, now spoken of with a confidence as startling as the information communicated is important, novel, and false. This was not so. These are mere after-thoughts of despotism. No man has ever shown one word from the *adopters*, conflicting with the text. Shall a committee sent out by the nation, affix to well understood language of the common law, and of every day use, some secret cabalistic meaning in hostility to the text; and then get the people, through their Conventions, to adopt the Constitution for the beautiful principles it expressed on its face, and after that was accomplished, to wait till the framers and adopters are dead, and then to come out and say, ah, the people have adopted this Constitution, for what it purported on its face, but we, the sons and grandsons of the Southern framers, have a cabalistic key left by our grandfathers in the South, by which, when the word justice appears, our grandfathers meant *slavery or injustice*; when we used the word *persons* we meant *slaves* sometimes, and sometimes *free persons*; when we said "no person shall be deprived of life, liberty, or property without due process of law," we *there* understood a slave to be a chattel or a piece of property, and not a *person*; we had a sliding-scale by which we used the word *person* for slave when the interest of the slaveholder is to be promoted, but when the language can be applied to him as a person in another part of the instrument, and thereby set him free, the intentment is to be against liberty, and that we did not mean that he should have any of the blessings of the Constitution, but only its curses and its cruelty. When the word *person* means *bitter*, it is the slave's portion; when the word *person* means *sweet*, he has no lot or part in that matter. Although the word *person* never meant slave in any written document before we affixed it among ourselves, or our grandfathers did, in this *peculiar* sense, and refused to use the word *slave*. This was the secret opinion of the drafters, who supposed they could thus *deceive* the adopters into adoption. When we enacted that Article by which we said "The United States shall guarantee a republican form of government to each of the States," we knew the old and true meaning of a republican government to be one in which the government was made by and for the benefit of the governed, and that each person in a republican form of government was born free and equal, and entitled to life, liberty, and the pursuit of happiness. This, we knew, would, by force of this provision in the Constitution of the United States, if faithfully honored, blot out slavery from every State Constitution, and every State upholding a proposition of slavery by State legislation, it being diametrically opposite to a republican form of government; therefore, it was agreed secretly, as a compromise, by the framers of the Constitution, as one of the secret compromises or implied guarantees, against liberty, that this should be an *unexercised article*, or an *unused function* of the Federal Constitution, as a sort of fifth wheel to a coach; because, if carried out, it would cut up slavery, root and branch, in the old States then made, and in the new to be made. Therefore, says this secret compromise-keeper, we, at the session of Congress in 1845, in pursuance of our secret compromise of interpretation of language, with its *use and disuse*, and under the suspension

of that article of the Federal Constitution guaranteeing a republican form of government, we admitted Florida as a State, as we had several slave States before, in which we permitted this Article of the Constitution, guaranteeing a republican form of government to each State, to be overridden and totally disregarded, as though it did not exist; and in the Florida Constitution Slavery is held such a sacred and central right among her institutions, that it is placed out of reach and beyond the control of her own legislature, and that colored freemen coming into that State from Maine, Massachusetts, or other free States, may be sold as slaves: and the right the Constitution guarantees to each citizen of one State in enjoying all the privileges of citizenship in another State, says our secret compromise-keeper, means, as it was understood by the framers in the cabalistic catalogue, that this part of the Constitution should never apply to a Massachusetts or Rhode Island citizen, if his great grandmother had a drop of African blood in her veins; and that although the Constitution of the United States had abolished attainders in this country, still, so far as free colored citizens were concerned in coming from free to slave States, they were to be regarded, in defiance of the Constitution of the United States, as attainted,—yes, the victims of a *colored attainer*, and subject to the awful judgment of perpetual slavery for showing their colored heads with no helmet but the Federal Constitution for their protection in a slave State. And if the old State of New Jersey had had the benefit of the Federal Constitution before the adoption of your new Constitution of 1844, and if Congress had given this State the practical benefit of a Republican form of Government, by abolishing in Congress your State slave laws, as contrary to a Republican form of Government, it would not have been necessary for me to have troubled your Honors, the legislation of Congress being paramount to all State Constitutions and State legislation on all points within its Constitutional jurisdiction. And although the Constitution of a State may be silent on the subject of slavery, still, if slaveholding legislation dishonor the State statute book, then Congress has jurisdiction to abolish such State law, as renders the form of that State Government hostile to a Republican form of Government. The form of a State Government may be Republican in its Constitution, but legislation may spring up in that State, by which one half of the people may assume to own the other half, in direct hostility to a Republican form of Government, and the United States, said Mr. S., is then bound, by some exercise of sovereign power, to restore to the people of New Jersey, a Republican form of Government, either by legislation in Congress or by the exercise of judicial power through the Federal or State judiciaries; and if through the latter, then I am in my proper place to contend here this day that this old law of slavery was unconstitutional ever since the adoption of the Constitution of the United States, as being contrary to the fundamental guarantee of the Republic, and all State laws conflicting with said guarantee of a Republican form of Government are null and void, as much as a State law violating the liberty of conscience secured by the Constitution; and if this ground be a sound position, the slave laws have been void from the adoption of the Constitution, as being in direct hostility to the solemn guarantee in the Constitution in favor of a Republican form of Government. Give me, said Mr. S., a Republican form of Government in the Constitution and the legislation of a State, and I defy any man to hold a human being in that State as a slave, according to the law of that country, until the meaning of language is revolutionized.

Said Mr. S., the very idea of a Constitution of the United States in an enlarged view, if he were able to take one, would be replete with consequences full of glorious import to the bondmen of this land. As has been said by me before in the course of this argument, a Constitution springs

from our weakness and need of protection, and is a covenant of the whole people with each *person*, and of each *person* with the whole people, for the protection and defence of our natural rights, of life, liberty, and the pursuit of happiness. Is it possible to conceive that a people meeting from their mutual weakness, and after coming together, conclude to make a charter party of piracy? That, although they agree to protect and defend five-sixths of the people in their natural rights, yet, as it regards the other sixth, they solemnly covenant and guarantee, to give them no protection or advantage therefrom, but covenant to strip said one-sixth of their natural rights of life, liberty, and the pursuit of happiness; and reduce them to chattels, men-breathing-property, so that they would be infinite losers by forming a Constitution. Instead of having their natural rights protected, they are stripped of the right to themselves, and delivered over to masters, who, drunk or sober, reasonable or unreasonable, sensible or foolish, are to make for them Constitutions and laws, in the height of passion, prompted by lust, avarice or meanness, from hour to hour, and day to day, until life's end. The slaveholders contend the Constitution of the United States secured them these terrible advantages. If it did, and the adopters had so understood it, I do not believe a single State would have seriously entertained an idea for its adoption for a single moment, north of the State of Delaware.

To be sure, said Mr. S., we have lived under an invisible Constitution of slaveholding construction for fifty-five years, which we have never seen, but have often bitterly felt—the good honest anti-slavery Constitution which should have gone into operation on the fourth of March, 1789, as it was honestly adopted, and if carried out, in the integrity of its high and glorious purpose, would, long ere this, have extirpated slavery from this guilty land, and made it the paradise of the New World. But the government, from its adoption, has been under, as a general proposition, the control of slaveholding Presidents, Vice Presidents, Speakers of the House of Representatives, who organized the legislative power with five millions of whites at the south, and ten millions of whites in the north. The south should have had three of the nine judges of the Supreme Court of the United States, but they have five and the north four; they have two-thirds of the foreign ministers, the principal officers on the sea and on the land. The south have furnished the spiracles through which the government has breathed, yes, and the eyes with which it saw, the ears with which it heard, and the tongues and pens by which it spoke and wrote. It is no wonder the ship lost the track of its contemplated voyage, and became the abused organ of a section of the land whose supposed interests prosecuted an implacable war upon human rights, or in other words the basis and prosperity of whose peculiar institutions were quickened into life by tears and blood, and found their proper aliment in crushing and prostituting the rights of one half of their own population, and holding human labor in contempt, by which three millions of their own population being white men, could not labor by the side of the slave without disgrace; and they, the whites, having no capital but their labor, sunk down to a point of degradation but little above the slaves, no schools, they became the *lazaroni* of this continent, while some forty thousand oligarchists, owning most of the land and the slaves, and being prompted by ambition and money, moved by the common spirit of slavery, the true bond of connection and source of their political power; these men have snatched this Constitution from the nation, and have given us by the force of suppression, violation, construction and interpretation, commingled with their fanciful guarantees and compromises, a Constitution as by them administered, bearing a faint resemblance to the one given us by the fathers of the Revolution, with their wounds yet unhealed from

the battle-fields of freedom. The preamble of the Constitution of the United States must have been adopted after the whole document had been prepared by the framers, as the grand exponent of intention; and as so much is said by slaveholding casuistry, that I have often thought the framers of that instrument had a melancholy foreboding, that attempts might be made by the crafty and designing of an after age, to pervert that document so plain and so full of good sense and virtuous principle to some sinister purpose; therefore, as an everlasting finger-board pointing to the straight road of intent, they virtually said,—“Here we unlock our hearts, as to object and design, and we say, trust not those who tell you this is not the truth. This is our design: We, the people of the United States, in order to form a more perfect union, establish justice, secure domestic tranquillity, provide for the common defence and promote the general welfare, and secure the blessings of Liberty, for us and our posterity, do establish and ordain this Constitution for the United States of America.”

What purity and nobility of object! How much have we had practically of this Constitution, by slaveholding construction? said Mr. S. Let us see how it would read if made for the object contended by slaveholders and their apologists, and as we practically see it administered. “We, five-sixths of the people of the United States, in order to secure a union among ourselves, which shall make the other sixth curse the union, and to establish justice for five-sixths by the most cruel injustice to the other sixth; to provide for the common defence of five-sixths, by taking away all public and private defence from the other sixth; to promote the particular welfare of five-sixths by destroying the entire welfare of the other sixth; to secure the blessings of liberty to five-sixths, and the curses of never-ending slavery to the other sixth, we do ordain this Constitution for the United States of America.”

What would the adopters in the thirteen States have said to such a draft of a Constitution? Most of the thirteen States, on organizing the conventions of 1788, for rejection or adoption, would have resolved to have let the common hangman hang this Constitution on the gallows, with caricatures of the leaders in the convention of 1787, and closed the scene by burning it up, and have adjourned *sine die*. Another Convention of the United States would have been called by an indignant people, and the first article would have abolished slavery, by name, in the United States, as an everlasting disturbing cause, no longer to be trusted to disgrace our soil. Many seem to think, we derive our natural, as well as citizen, rights, from a Constitution. That, said Mr. S., cannot be so. Our natural rights are derived from our Maker, and the Constitution is like a fence around them to protect them from the invasion of others. Men derive title by letters-patent from the Supreme power of the State, to their land, and the fence is placed around it to protect it from the wandering herd. Constitutions may also be said, said Mr. S., to be of American origin, and it is not possible we were so corrupt in the morning of the science. To be sure England talks of her Constitution; she speaks of *Magna Charta* obtained by fierce and ignorant barons, in the year 1215, with sword in hand from feeble John; also the introduction of the Protestant religion, by Henry VIII., and the Revolution of 1688, and some other important epochs like the Reform Bill, which added to the current stream of imperial Legislation, all considered, being “*moles indigesta*,” make the sum and substance of what an Englishman means by the Constitution of his country. France made several Constitutions during the political paroxysms and revolutions of that curious people, during the latter end of the eighteenth and the beginning of the nineteenth centuries, but at last this gallant people revolved in a circle of elementary expedients, from

1789 to the war of the Barricades in 1830, making organic experiments, to collect the true sense of the nation respecting the safest place or hands in which to lodge power, from which the greatest amount of protection might be expected with the least burden to the people. Different forms of primal law were submitted to the people for adoption or rejection.

But, look at Russian, Prussian, German, and Italian States; here each person is looking to imperial, royal, or ducal prerogatives, for that security of life, liberty, and property, which should never have been absorbed by the Crown, but should always have constituted a fundamental layer of human rights, coming from, and adopted by the people, as their wall of defence.

Our Colonies were in the habit of receiving gifts of a political character, carefully sent over the Atlantic after them, in grants, patents, bills of rights, and charters; the very rights which they could not have left behind them, and *been men*. These Constitutions, anywhere and everywhere, as a general rule, are made to defend human rights and not to crush them. The very idea of a Constitution is like a life-preserver, made to save men in their danger in the water, and is not to be loaded with lead to sink them. There are innumerable modes by which human rights have been crushed, without calling in the very thing which should protect them, with which to accomplish so diabolical a purpose. To suppose ships made on purpose to preserve five-sixths, and expressly to drown the other sixth who sailed in them; the bridge to precipitate its sixth passenger over it into the river; is not more absurd in supposition, than to suppose a United States Constitution an instrument of ruin and destruction to every sixth man who sought its protection. Instead of an asylum he finds it to be a dungeon with fetters; that he is to be bereaved, and his posterity in all coming generations, of all capacity to have natural rights; the forlorn victims of avarice, lust, cruelty, and contempt; *himself*, property owned, and in the most abject form, shorn of the power to assert the strength Heaven gave him to protect his most valuable rights. Rights! Amazing! he has no rights but the right to be abused, to be whipped, to starve, to suffer, and to die!! This idea of a Constitution being used as a death-warrant to execute human rights, is a horrid solecism! incomprehensible, yea, a sublime absurdity; the greatest insult ever offered to the human understanding; and certain men pretend such is the Constitution of the United States. If the Constitution was an animated being, with reason and a voice, said Mr. S., and were you to ask her to speak and say, was she made to uphold slavery, and destroy human rights, she would answer, "As to slavery I know not what you mean by the word, I never used it in my life; I was born and brought into this world for the single purpose of protecting the rights of persons, defending men from the violations of their human rights, from invasion from abroad, or forceful wrong on the soil. I know no one, except as a *person* possessing the rights of life, liberty, and the pursuit of happiness, and for their protection I put forth my power. When the free men and women of this country are counted as a basis of representation in Congress and for Presidential Electors (Indians not taxed excepted), and three-fifths of all other persons are to be counted, and if States or individuals call those three-fifths slaves, serfs, or connecting links between men and monkeys, and even treat them as such, I only know them as I do the rest of mankind, as persons; my eyes can only see men as persons, my ears can only hear the cry of men as persons, possessed of natural rights. I cannot be used to destroy the liberties of any innocent man. It is not within the range of my power, unless I am perverted to purposes contrary to my instincts." Who dare affirm, says she, that I guarantee slavery and make compromises for its support. Oh! says she, it is all

false, it is directly the reverse ; I guarantee to each State a republican form of government, which confers the equal right of life, liberty, and property to each innocent human being in each of the twenty-seven States ; that is my right, my power, my nature, prerogative, scope, end, and object of my existence ; and slavery exists in this country to my unutterable confusion, by my violation direct, and by reason of the people of this land having refused to allow me to prostrate slavery through the judiciary or Congress, under my guarantee of a republican form of government to the States. *Persons* bound to service or labor by laws of one State, I say, shall not be withheld, but shall be delivered up on claim of him to whom such service or labor is due. Here I deal with persons again. If the wife, the son, the daughter, the apprentice, the prisoner from his bail, escape into other States, I order all of these persons to be delivered to the husband, or the father, or the master, or their bail, to whom such labor and service is due, and for this purpose I am a perpetual treaty between the States, to accomplish these just objects, and save the effusion of blood. If, says the Constitution, a slave is not a person within the protection which I afford to all persons where I say "no person shall be deprived of life, liberty, or property, without due process of law," then he is a being I have no right to touch and deliver up, for I can only deliver up persons bound to, or who owe service or labor as persons and not as slaves ; and if these persons are slaves, then I am under the most solemn promise and obligation not to explain away, but to see that slave-persons, if you please, are not deprived of life or liberty, without due process of law, which must have been some distinct adjudication that the being was a slave by a court, acting on the principles of the common law. No such court has been organized in this land, no such judgments have been rendered. If he is within the protection of the *magna charta* part of my character, then I will not deliver the man to his master, as you are pleased to call him, until a judgment of some kind, showing that the man owes service to another, and has been deprived of his liberty by due process of law. Some record of that kind must be shown, or I cannot deliver him up.

Said Mr. S., I demand that these persons be delivered up to enjoy their liberty, on the ground of the declaration in the Constitution of the United States declaring that "no person shall be deprived of life, liberty, or property, without due process of law." There is not a slave or servant, so held, of the four thousand of both sorts in New Jersey, but what are entitled to their liberty by the Constitution of the United States.

Said Mr. S., it is a curious and a ridiculous idea of some, that our fathers had secret thoughts of crime against man, which they had not the courage to express, under the name of intentions, when they drafted the Constitution of the United States ; and that we, out of respect to the unrecorded, unwritten, villanous intentions, and wicked wishes of our venerable ancestors, should take those wicked thoughts and unrecorded intentions of crime against the rights of man, as our Constitution, under the idea of intention, rather than the beautiful text itself, so full of life, liberty, and justice. Said Mr. S., the Constitution of the United States, on its own face, is safe, and more to be relied on to explain its own meaning with justice to the framers, adopters, and us, their posterity, than all we could learn from each drafter and each adopter, could we summon them before a court of justice to explain it as they understood it, on the 4th of March, 1789, the day it went into operation. To be sure, if the adopters ever thought of slavery, they did not think to name it, and must have supposed it near its end, and they did not wish to disgrace the nation by the admission that so foul and base a thing ever existed. This is truly lamentable, to think the human mind is yet in such a low

state of civilization, that from this point to enter goose-hood, would be elevation, and that men should delight to lay hold of absurd views, as the one exposed, to justify themselves in the perversion of that glorious instrument, to some low and grovelling purpose, pecuniary or political.

Mr. S. said that he felt mortified to think it should be necessary for him, in the 19th century, to stand in Republican America, the live-long day, before one of the highest courts in intellect, learning, and station, to prove a human being a man, and not a thing. The proposition that the colored people of this State held in bondage, are men, born free and independent, by the law of nature, is one above all demonstration, outstrips all logical deductions, and addresses itself to our every perception, for its truth, which can gain nothing from analogy, and borrow nothing from illustration, comparison cannot aid in its development, and similes cannot make it more clear to the human mind. Antiquity and to-day utter the same response. It is the same yesterday, to-day and forever. Every degree of latitude and longitude renders the same verdict, whether at Timbuctoo or at Trenton; whether in mind, or in body, for time or eternity, they are men and women, creatures of hope, gazing on the same bright, strong, beautiful and ancient Heavens, on which Adam and Solomon, Daniel and Paul, Copernicus and Columbus, turned their admiring eyes; the frames of colored men, their human countenance divine, containing the same unerasd lineaments, vindicating in celestial heraldry the grandeur of their descent, the greatness of their origin—showing that God is their Father, that all men are brethren of one blood, that the sweets of life, the joy of liberty, the hope and pursuit of happiness, are the gifts of the Great Father, to all, and each of his children, with a power and privilege for ever to climb the ascending heights of eternity, through the merits of His Son, increasing in happiness and knowledge, through the endless day of Heaven.

Said Mr. S., the greatest announcement affecting the interests of man ever made since the advent of the Redeemer, was the synopsis of the rights of man, made by the immortal signers of the Declaration of Independence, on the 4th day of July, 1776.

The announcement was antagonistic to the opinions of all former ages, and the then existing powers of this world. Russel, Sidney, Milton, Cromwell, and Locke, were permitted to ascend the mount of discovery, and behold, as by prophetic sight, in the land of the setting sun, beyond the vast Atlantic, a people asserting what these philosophers believed; that all men were created free and equal, and possessed of certain inalienable rights, amongst which were life, liberty, and the pursuit of happiness. What they hoped for man, we have seen and heard. When this sublime declaration was made on the 4th of July, 1776, it was high treason, and political atheism, in every other Government on earth.

To all other governments with birth-born kings, birth-born legislators, birth-born judges, this declaration of the American revolutionists was a thousand times more formidable, said Mr. S., than war or revolution itself. This was a great fundamental proposition, placing all men on a level, and as equals, in the start of the journey of existence; stating the value, the riches of their elemental capital, which no insolvency could divest, no bankruptcy carry away. Slavery, or the inheritable dominion of man over man, with its complicated train of truckling dependencies, artificial distinctions, the iron-railing of caste, were in one day, by the great proposition of the 4th of July, struck down as false in principle. This was the sentiment of a New World, and the signers of the great human being *postulatum*, spoke for themselves, and the unborn nations of this great continent, representing this great Americanism of the new hemisphere. The glorious sound went careering through the world, that

all men are created free and equal. The Massachusetts slave heard its music, and joined in the chorus, and his freedom was confessed. The slaves of New York and Pennsylvania listened to the joyful acclaim; the man-chattel of New Hampshire caught the still-small voice, and joined in thanks to Heaven, that all were free. Congress caught the sound, and said, the African slave-trade should cease on our part for ever, and that no slave should tread the States of Ohio, Illinois, Indiana, Michigan, and the territories of Wisconsin and Iowa. The angel of deliverance flew with the mighty scroll in her right hand over valley and mountain to the vast lands of Mexico, and proclaimed from the summit of her smoking volcanos, that all men were born free and equal; and in one day, 50,000 black slaves, and two millions of enslaved Indians, in their *repartimientos*, in the mountains, in the mines, in the workshops, and on the roads, in their chains, heard the glorious decree, and they all in chorus joined, and sung, "that all men are created free and equal," and in that instant they stood up free. The angel cried again in Guatemala and Peru, from the depth of the blue heavens, "that all men were created free." The black and red slave heard his voice, from the mountain and the mine, the hill and the hollow, that all men were created free and equal, and their fetters fell from their delivered hands as they lifted them to Heaven; and then they sung, "all men are created free and equal," for they were free.

Along upon the mighty Andes the angel flew, and from Chimborazo's icy top, she cried again so loud and long, that the tens of thousands of poor bondsmen of Chili heard, some in those unvisited regions, subterranean, damp, dreary, digging gold ore and veins of silver, far under the floor of the roaring Pacific, who never saw light; while others were delving in the depths and bowels of the Andes, to satisfy the accursed thirst of gold; others in smelting-houses loaded with chains; others driving, as serfs, their master's flocks of goats and sheep on the mountain's side, and the loaded mule along; others with loads upon their heads, in the rounds of common life, who wore out their being for thankless masters; others to galleys chained; others bound to posts, whose backs were being scourged; others in a deferential form were listening to the raging words of graceless masters. All heard the long, the loud trumpet sound, "that all men were created free and equal." All around the whips and fetters fell, and in one joyful hour, in time, up went the glorious chorus of response from men who were slaves no more, who said and sung "*all men are created free and equal.*" The joyful proclamation, by the angel made, and the sublime chorus, and humanity's reply, rolled over the great mountain, and down its eastern slant, and the slaves of Guayaquil, Columbia, Venezuela, and Bolivia, learnt to sing the holy notes, "that all men are created free and equal;" and in one day deliverance came to all these sons of sorrow and of toil. The angel then to the West Indies flew, and the men of Hayti said, throughout that Island, all men are free, and one million stood up enfranchised; the anthem of deliverance was sung in each British Isle on the 1st of August, 1838, and 800,000 slaves in one moment became 800,000 British Freemen. The angel flew to the Cape of Good Hope, and sung her celestial song, and in one day, 100,000 bondmen cried from the Cape inland 600 miles East and West, from sea to sea, "we all are free." The angel balanced on his pinions, flew and cried in the ears of the Bey of Tunis, and in the Egyptian Ali Pasha's, "that all men are created free and equal." These sons of Mahomet heard, and the Heaven-made-decree obeyed, and in those lands of darkness and of death, in one day each slave cried out, "I am free! I am free!" On the 1st of April, 1844, the angel of peace and good will towards men, blew a louder and longer blast than he ever yet had done; it was heard over the hundred millions of the East Indies,

saying "all men were created free and equal." In a moment the hereditary serf, the caste-marked million, and slaves by descent, for ages, in all 12,000,000 told, started into life and joy, amidst rattling chains and broken fetters falling from them, their eyes streaming with tears, grateful to Heaven as they flowed, and they all joined in the glorious song which they now sung, "that all men are created free," and "that they were slaves no more!"

Said Mr. S., we live in an abolition age, when the dungeons which have incarcerated suffering humanity, are being broken in, and unlocked in every corner of our benighted world, and the captive bid come forth; and may I entreat this Honorable Court to share in the unfading glory of opening this castle of slavery, New Jersey, with the key of the new Constitution, and the other keys he had the honor to submit to this Court, by which to let oppressed men go free.

Here Mr. S. closed his opening argument, having spoken until six o'clock P. M.

The Court adjourned until Thursday morning, at ten o'clock, A. M. The Court met at ten o'clock A. M., on the 22d of May, and Chief Justice HORNBLLOWER made a very able, eloquent, and affecting address, to two fine looking young men, who were sentenced to be executed in August next, for the murder of Parke and Rasner.

At eleven o'clock A. M., Mr. ZABRISKIE opened his argument for the defence of the Claimants of these persons, and spoke till half after one, with a good deal of talent and power. The Court adjourned until three o'clock P. M. Mr. ZABRISKIE resumed, and concluded at half after three, P. M.

Mr. BRADLEY, as Counsel for the Claimants, spoke with much energy and ingenuity until five o'clock P. M., when he closed.

Mr. STEWART replied from five o'clock P. M. to six. The Court adjourned until seven, P. M., and Mr. STEWART spoke from seven P. M., until half after ten, and closed.

It is regretted that the arguments of Messrs. ZABRISKIE and BRADLEY, could not have been given at length, but many of the points which they made will appear in Mr. STEWART's reply. It is not expected we should report all Mr. S. said, first and last, in eleven hours of delivery.

Mr. STEWART said in reply, that he must express his gratitude to the learned Counsel, for the kind compliments paid to his intellect, by one who had given us so strong evidence, that he himself enjoyed the singular fortune of a fine mind, embellished with the advantages of a polished education, and what he could not command from research, he might still enjoy by the power of reflection.

Mr. S. said the learned Counsel had alluded to the fact, that the first person they had seen alive, who was an abolitionist, in the county of Bergen, was the person, who served these writs of *Habeas Corpus*, Mr. PALMER, and the Counsel gravely informs us, that the people did not *tar* and *feather* him. Said Mr. S., I suppose this statement is made as a distinguished compliment to his neighbors in that county, and as the highest proof they have ever given of their civilisation; and it is to be hoped they may never, in an evil hour, fall below this high water mark of their advancing elevation. Mr. ZABRISKIE has told us, to frighten and almost alarm us out of this effort in behalf of crushed men, and to make us leave these slaves in the great man-trap, that if your Honors let those slaves go free under your new Constitution, the Courts will be compelled to hear arguments by wives and children, to be set free from the dominion of their husbands and parents. The bare statement of so strange a proposition relieves me from a reply to it. The gentleman has endeavored to alarm the sensibilities of the Court, by a parade of several distinct

orders of modern philosophers, known under the name of Fouriers, Anti-Renters, Socialists, Owenites, Fanny Wrighters, Non-Resistants, and No-Human-Government-men, Dissolvers of the Union, Nullifiers, and Infidels. And he would wish to fasten the opinion upon the Court, that there is some sort of relation between these philosophers' views and this dry law question, which is, whether slavery in the State of New Jersey, is a *legal* and *lawful* institution or not. I confess I cannot discover any more relation between the philosophical dogmas of these different philosophers, than there is propriety in the following question: "If it is two hundred miles from this place to Boston, what is the amount of the first quarter's salary of the Lord Mayor of London?" I think when the pertinency of one of these propositions is made manifest, the other will then appear.

But, said Mr. S., as there have been several attempts to lock and hook together during the gentleman's reply, things the most dissimilar and uncongenial, I will take, if the Court permit, the present opportunity to define the liberty party abolitionists' creed, a body of men who, at the late election, appeared to number about 62,500 voting men, of which body the speaker was an humble member. The liberty party abolitionists, in the United States, had been a political party, with its candidates, ever since April, 1840; and was formed from necessity, to overthrow slavery, after having tried both of the old parties in vain, each of the old parties having a slave end to it, so it was impossible to get either to undertake this work. The liberty party hold the Constitution of the United States to be, when properly interpreted, an anti-slavery document, replete with tendencies in favor of freedom, but that the slaveholding portion of this country have seized upon the reins of government, and perverted the Constitution's high intent, to the base purposes of sustaining, and increasing the power of slaveholders in every possible way, and have violated the Constitution by employing it to sanction slavery in many ways, and in the overthrow of the right of petition. The liberty party abolitionists mean to employ the Constitution, and in pursuance of its authority, and not contrary thereto, to overthrow slavery in every way, and by all lawful means. We mean as a body, and it is a part of our creed, to cling to the Union or Confederacy under all circumstances, and never give it up; slavery in, or slavery out, Texas in or Texas out: we hold on to the Union and every acre of its soil, whether it be the sands of Georgia or the mountains of Vermont, for the exaltation, purification, and enfranchisement of this land from slavery, root and branch. It is a cardinal principle from the beginning, never to vote for a slaveholder, or an apologist of slavery, but hold it our duty to vote at every election for men for town, county, State, and national officers, who will employ all lawful power to banish slavery from the nation, for the sake of three millions of slaves compelled to work without wages, as well as three millions of ignorant, poor, and *unschooled* whites in the South, the lazaroni of this continent, who are ruined by the most abject poverty, it being disgraceful, for them to labor for wages by the side of the slave. To save six millions of human beings from ruin or desolation, or one-third of our countrymen, is the exact object of the liberty party abolitionists, let it take ever so long to accomplish it. We have no motive for advancing the one, or retarding the other of the great parties, as we mean, in the end, to overthrow them both as soon as we can get our countrymen to adopt our belief; we are law-abiding and law-sustaining men, and there is no more connection between the liberty party abolitionists, and the list of philosophers just enumerated, than there is between the Chinese wall and the Erie canal. We believe in short, a man has a better right to his own wife and children, than any other man; and we suppose the curse of slavery has, as a mass, nearly ruined the men of the South, as well as the land of the slave States, and we wish to

improve and save our country and our people, by our party organization. And my apology to the Court for this statement, defining our position, is, said Mr. S., the attempt to injure and dishonor as high-minded and pure body of men as breathes, by making them keep company with those philosophers, however respectable they may be; yet we have not chosen their society, or opinions, in the prosecution of our enterprise. The counsel of defendant, said Mr. S., has attacked New York for calling a State Convention,—I can see nothing *ULTRA* or radical, once in a quarter of a century, in a State's reviewing the ground it has passed over, and thus lay hold of the improvements time suggests, or brings to light, for perfecting her great social edifice. The old way to amend the fabric of government in Europe, was on the battle-field, amidst the clangor of arms and roar of artillery, with bullets for *yeas*, and cannon balls for *nays*. Mr. S. confessed he much preferred the mode adopted by the State of New York. The learned counsel, to get rid of the force of the first Article of the new Constitution of this State, says it is a mere abstraction, a rhetorical flourish, and is not a *part* of the Constitution, in reality, not binding us to do anything. Said Mr. S., I should like to know where I am to begin to read the new Constitution, and how much of it is to be rejected as surplussage?

The other counsel, Mr. BRADLEY, says this section of the Constitution is a mere braggadocio, a mere telling England that all men are free and independent by nature, and it is so said, to let England know that our people *know* that we are as good as her Lords and Commons, Kings and Queens, and that it grew out of our revolutionary jealousy, of our own importance, when we first inserted it, in the Declaration of Independence. Said Mr. S., this is queer indeed! New Jersey, in her old Constitution, made two days before the Declaration of Independence, was perfectly silent then; when the reason for bragging might have operated, she is very meek *then*; not one word is said about human rights; but 68 years afterwards in September, 1844, when all danger is for ever passed, according to the gentleman, New Jersey sticks up her bristles, and says, "I would have you know, old England, yes, old John Bull, and you Miss Victoria Guelph, and Mr. Albert Coburg, that we are as good by nature, and as independent as any of you, *yes, that we be.*" But the sober-minded, brave, and considerate Jerseyman never had such a thought pass through his mind, at the time he voted for its adoption. He had too much regard for his own dignity, and too much respect for England, to employ himself in such a miserable small game of swelling and surf-making, to elevate the character of his country. The noble-minded Jerseyman is willing that other countries should amuse themselves with the baubles of kings, queens, and lords, as national dolls and play-things, without considering himself undervalued in the least by not being used for the same puerile and harmless purpose by his own countrymen; and the last place in the world he would seek to curl the lip of scorn, would be in his own great fundamental and organic law, asserting his own freedom, dignity, and independence. Said Mr. S., Mr. B. contends that Moses' law sanctioned slavery, and the buying the heathen around about for money. Yes, there was a kind of servitude which looks like the buying the heathen by those ancient Jews for money. But, said Mr. S., the Jewish government was a theocracy, and every law, decree, or order of government, began with "Thus saith the Lord," as a standing formula; whether the document, law, or proclamation, came from the elders, a king, a general, or a high-priest, from a good man, or bad one, whoever had occasion to employ the character of the government, as that was a theocracy, and these rulers always used "Thus saith the Lord," as a universal preface to the law. All of Moses' laws were not from God; but Moses' system was a code of

particulars, some from God, and others from man. The Saviour settles this question in the case of that law of Moses, by which a man might live with his wife, a month after marriage and if he did not like her, then gave her a bill of divorcement, and sent her away, however virtuous and he worthy. The Saviour says, "Moses suffered it from the hardness of your hearts, it was not so in the beginning," &c. Now, said Mr. S., this month divorce; the case of a Jew being permitted to take a cow, or an ox, which had suddenly died, to the gates of the city, and there sell it to the heathen and strangers to eat (forbidding the Jews to eat it), also the case of taking interest of the heathen, and none of a Jew. Polygamy is a fourth case, and the fifth is a man's making his captive into a wife, living with her as long as he pleased, and then setting her adrift, as in the 21st chapter of Deuteronomy, all of these cases have thus "Saith the Lord," as much as good laws. These laws Moses suffered this ignorant people to adopt as a matter of expediency, but they were not the laws of God, but are properly recorded, as our laws formerly in New York were, in favor of lotteries, and regulating Long Island horse-races. But the terrible injustice of these laws, proves that man was their author, and not God; but they are recorded under the general appellation of "thus saith the Lord," because the Government was a Theocracy. This view, Mr. S. believed necessary, to vindicate the purity and glory of God. There was a law of Heavenly origin which said, "whoso stealeth a man shall surely die or be put to death," which form he did not recollect, and is found in these same chapters. He, Mr. S., did not see how that law of God could be reconciled with American slavery; for every man and woman, or his or her ancestor, had been stolen in this country. Again, if slavery is a Bible and Heavenly institution, we should not be *opposed to it in the abstract*, as the defendant's counsel are, but everything should be done to foster and encourage it, and their honors should resign their seats rather than decide in Mr. S's favor, however plain the new Constitution or other thing might be for the slave; for if the Bible countenances slavery, it is abstractly right, and the plaintiff's counsel commits a great sin in opposing slavery in the abstract, which they intend to atone for by going with all their might for it practically, and thus purge themselves for opposing what the Bible sustains in the abstract and concrete. If it is a Bible institution, which we have been abolishing in New England, New York, and Pennsylvania, let us repent in dust and ashes, and run down all the colored, the weak, the young, the Irish, the English, and the strangers on their first arrival; and catch our few suffering Indians, who are still straggling as wanderers among their fathers' graves, and make them all into slaves, and their posterity in the free States; and thus secure the blessings of Heaven, that are poured out so bountifully on Virginia, Maryland and the Carolinas.

Mr. S. said that of all remarkable arguments for ingenuity, he had heard one urged by both of his learned and ingenious adversaries, and, in fact, the main one, on which they sought to continue the institution of slavery, in this State, which surprised, yes, astonished him, by its subtlety and cruelty. In the 1st section of the 10th Article of the new Constitution of New Jersey, among other things, it says, "The common law and statute laws now in force, and not *repugnant* to this Constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the legislature; and all writs, actions, causes of action, prosecutions, contracts, claims, and rights of individuals, and of bodies corporate, and of the State, and all charters of incorporation, shall continue, and all indictments which shall have been found, or may hereafter be found for any crime or offence committed before the adoption of this Constitution, may be proceeded upon, as though no change had taken place."

The point the defendant's counsel would raise, is this; admitting that the new Constitution has abolished the old slave laws, root and branch, as being "repugnant" to the new Constitution; still under the name of "claims and rights of individuals" which "should continue," the rights of master and slave are both preserved in the 1st section of the 10th Article of the new Constitution under the head of "rights preserved," as defendant's counsel contend. The counsel further contend for defendants, that it is good law without such saving clause in the Constitution; and that all rights are preserved, notwithstanding a constitution, hostile to them on its face, has abolished the laws which created the rights, in so many words, *totidem verbis*.

Said Mr. S., I deny these propositions *in toto*, as applied to a case of slavery. *Reserved rights!* said Mr. S., they would be *reserved wrongs!* and upon that principle a State could not abolish slavery, as for instance, suppose South Carolina makes a new Constitution, and abolishes slavery, and with, or without a reservation of the *rights* of the citizens; according to the argument we hear, the rights of the master are all taken up and preserved in the new Constitution, to the services of the slaves; the rights of sale of labor, or sale of the slaves, or their offspring, are the same as before. They alter this Constitution again, and re-assert, ten years afterwards, that slavery shall never exist in South Carolina; but the planter smiles at the imbecility of the Convention, and says, although they have for the second time abolished slavery by the Constitution, and all laws which maintain it, yet according to the arguments of the defendant's counsel, in New Jersey, my rights are all preserved to the slaves, and that is all I ask; and furthermore, says he, it is curious to see how the body of this glorious institution of slavery survives its own decapitation. They cannot, says he, abolish slavery, even in a Constitution made on purpose, but the Divine rights of slavery will survive, and ride careering over all human attempts at their annihilation; and what, says the South Carolina planter, is the peculiar beauty of this proposition, is, that by the universal admission of all jurists, slavery can only exist by positive law, for its support; but, says he, I have now discovered how it may exist without positive law for its support, but in deadly opposition to the most stringent organic Constitutional Law, for its entire abolition and express destruction. Once in a nation, and adopted by law, no form of law can banish it, as it lives under the name of a "right preserved;" yes, it lives and flourishes with an endless life. It is the real "live-for-ever." Yes, if this argument is sound, the most monstrous wrong in the universe, for whose destruction a new Constitution was expressly made, flourishes and prevails; yes, lo! the melancholy spectacle is presented to the astonished world, that although the laws sustaining slavery are all abolished, yet slavery has a more solemn and formidable protection, as a reserved right, than it ever had before, and that too in the bosom of its own executioner. The counsel, I have no doubt, hopes the shrewdness of this argument will be its apology for want of solidity. The master never had a single just right to the slave, and the Constitution no more preserves any for him, than it does the turnpike for highwaymen, the treasure in my house for a thief, or the thoughtless young heir, for a prey to black-legs and sharpers.

Mr. S. said, after this view of this question had been taken, he should consider the concession virtually made, that slavery was repugnant to the new Constitution; that the Massachusetts decision ended this cause, if good authority. But slavery had been spoken of by the defendant's counsel with great respect. Said Mr. S., I regard it as the curse of the Nation. Virginia, at the time of the first census, in 1790, had more than double the inhabitants of the State of New York: now it is sadly reversed, New York has about double that of Virginia. Virginia, with nearly double the territory of New York, and more good land than New York, situated in the most benignant climate, to be found under the bright Heavens, penetrated

with large bays, and beautiful, noble, and navigable rivers, stretching to the metropolis of our land, washed by the Ohio; no land whose mountains are more ready to burst with their mineral wealth than her's; whose lead, iron, coal, and copper, lie hoarded in those beautiful mountains, in value beyond the computations of numbers, or the dreams of avarice. But that wealth shall never be explored, raised, or enjoyed by the palsied arm of slavery. No, it is reserved for the vigor of the freeman's strength; not dishonored by the blight of unpaid labor: those treasures will only come at the call of honored and free labor.

Look at hundreds of thousands of acres of fair and valuable land in Western Virginia, which would make beautiful farms, when free labor shall be honored, now sold at six cents, ten cents, and twenty-five cents an acre. Look at hundreds of old farms within forty and fifty miles of Washington, to be sold from \$4 to \$10 per acre, with their dilapidated buildings, covered with mortgages and trust deeds; the same land, slavery abolished, and freemen to cultivate, would be worth from \$30 to \$80 per acre. Look at whole regions and portions of counties abandoned, as commons, in old Eastern Virginia, where you may ride for hours, without meeting an inhabitant in the lower counties of this State,—land yet beautiful, if its powers of fecundity were truly developed by freemen, once the seats of joyful hospitality of the last century, now as silent as the ruins of Palmyra and Babylon. The young growth of timber coming up, the wild animals resuming their ancient dominion, the traveller from the old world, as he measured his lonely steps over these forsaken abodes of men, would inquire what desolating wars have consumed the sons and daughters of this fair land? in what Chronicles shall it be found, or what more than Egyptian plague has been and bereaved these uncultivated lands of their proprietors, and has left the fox to come in at the window, and the owl to hoot at noon, and appointed the stork, the raven, the cormorant and bittern, to perform the hospitalities of these dilapidated homes of departed men? Alas! the curse of the slave's foot-print has been *here*, unrewarded toil has been *here*, inalienable rights have been cloven down *here*, man has ranked with the ox, in the market, *here*; marriage-rights were trodden under foot *here*; the father who begot, and the mother who bore the son and the daughter, had no rights in their children *here*; men had no right to cultivate their immortal minds *here*; justice and mercy had no abode *here*; free labor was dishonored *here*; the lash, the fetter and the chain, ruled *here*; and at last, hunger expelled the oppressor from his home *here*.

Said Mr. S., the splendid and princely plantation of George Washington, the Father of his country, presents in forty-five years one of the most melancholy and remarkable instances of that ceaseless vigilance of Providence which pursues injustice with unerring certainty, from year to year, and at last overtakes and awards the punishment affixed to fundamental violations of the great rights, which the Father of all has in the welfare of his abused children.

Thousands of acres, and money in vast amount, united in the official station of President, this plantation lying within some ten or twelve miles from the three beautiful cities of Georgetown, Washington and Alexandria, partly surrounded by the majestic Potomac river, bearing on its commercial bosom ships from the ends of the world, freighted with every human want, this plantation was ready to ship at its own door, every redundancy it bore at remunerating prices. The ambition of General Washington during the last years of his retirement was to make this favored place, with his hundred slaves, his abounding wealth, the great pattern plantation of this continent. Having done much to see his high purpose accomplished, in December, 1799, he died, having emancipated his slaves by his will. Judge Bushrod Washington, his nephew,

with a large family of slaves, with a salary of \$4500 from the United States as Judge for life, succeeded his illustrious uncle; and in 1819 or thereabouts, made a large sale of some thirty to fifty slaves, being near one-half. The nation was incensed at the act; his public apology was, that he was compelled to sell part to support the rest, and thus the process of *anthropophagi*, or man eating man, indirectly commenced; the cultivation was miserable and the bushes encroached; some fields by 1828 or 1829 at the time of the Judge's death began to be given up. John A. Washington, the nephew of the Judge, succeeds, the woods still gained, field after field, under slave and master's cultivation, went back to primeval forest. And about 1839 or '40 Colonel Washington died, and in the month of April or May, 1842, the widow and her children were like Adam and Eve from Paradise driven out. "Great Burnam Wood had come to Dunsinane" as in Macbeth; the door was locked, the gate was shut, slavery's curse and the wilderness had expelled them from this ancient home of America's great man. This is slavery, sooner or later, everywhere; the curse of Heaven is upon it.

Mr. S. said, it would be a fraud on the people of New Jersey, so to construe their new Constitution, as the defendant's counsel had contended. There was not one in fifteen of the seventy-thousand who voted for its adoption, who would not glory and feel elevated by the act. To see these poor bondmen and their children free, must be matter of joy to all. The argument they would not be so well off, is too stale to be used in 1845 in New Jersey. For if the argument proves anything it proves too much, and that it would be better for the great mass of mankind to be slaves, and that it is a desirable institution. On that point I have no more to say except that those who believe such doctrines can easily put themselves and families in possession of its blessings, as several of the slave States are so kind as not to refuse to those of Anglo-Saxon descent the *peculiar privileges of that pleasant-spoken institution*.

To illustrate one of the abhorrent features of the institution in the slave States, Mr. STEWART, adverting to one of the positions of the opposite counsel, supposed the following case. An old man, said he, whom we will call Tinkem, lived in Trenton, once upon a time, and not being long for this world, called his ten sons around him and told them, My sons, I have but little to give you of worldly property, and, therefore, in order to start the five oldest of you comfortably in this life, I give each of them one of their five younger brothers, to be his property,—in other words, his slave for life, and his posterity after him. And you, the five youngest of my sons, must be the slaves of your elder brothers. I do this in conformity with the usage of the citizens of a large number of the States of this Union! But the eldest son says, "Father, what are the rights and prerogatives which we shall, in that case, possess over our slave brothers?"

"Oh," said the old man, "you will reduce them to chattels, or cattle,—living, breathing property,—that is all. It is perfectly legal, and you will be protected in the enjoyment of your property; you are no longer to regard them as sentient beings; you are to deprive them of all education, except the cart-whip instruction; you are to make them know and feel that their every moment is to be regulated by your wish and will, and that they are subject to be sold, and worked, husband apart from wife, and wife from husband; and their children from both. So, now, my sons, take your slaves, and begone!" Now (continued Mr. STEWART), the story of this horrible deed reached the ears of the citizens of Trenton, and the sanctums of its editors. A burst of indignation is the consequence. Everybody and every press exclaims "monster! monster! monster!" with one voice. It is taken up by the people, and the press of Philadelphia and New York, and language grows weak, and imagination weary, in searching for fitting epithets in which to condemn the foul and

damning act of this heartless old villain, Tinkem of Trenton! Men come from a prodigious distance to get a sight of so much moral deformity, existing in a single man. The phrenologists come to examine his cranio-logical developments, wondering what manner of man-monster he can be; and the whole nation rings with the story, and but one opinion is expressed, everywhere, in public and in private,—and that of horror and astonishment. But, your honors, pause in your honest outburst of indignation. Old Tinkem stands excused, in view of the fact that not a week comes and goes in the regions of the sunny south, that does not furnish a parallel to his conduct. A slaveholding father there gives the children of his own body, by his bond-woman, to be slaves for life, to his children by his free-woman,—I mean, his wife! It is done in twelve States out of the seven and twenty of which this Union is composed, whenever the father wishes to endow his heir out of his possessions. And this I hold to be slavery in the length and breadth of its flagitiousness; it is yet but one phase of its abounding villany. The picture is startling, frightful, revolting; but it is neither overdrawn, nor too highly colored.

Mr. S. replied to several subordinate points made, and authorities cited by the counsel of the defendants, which it is not supposed would materially improve the report of the argument. What is further said is a part of a report made of what Mr. S. said, by Mr. Otis, reporter of the New York Evening Express, and what followed Mr. STEWART's close is the report of Mr. Otis also.

Mr. STEWART drew his remarks to a close by appealing to the Court very earnestly as to the high and solemn duty left to them to perform. It is yours, may it please your honors (he said), to put the last, the finishing stroke upon slavery, in one of the noblest old States of this glorious confederation. It is an honor which you should covet. Let no man take it from you. Leave it not to other hands to finish so noble a work. What would the world say, to see a case like this, argued as it has been before this Court for two days, with the full light of this blessed and glorious Constitution shedding its rays upon it, turned off and decided against liberty, upon the worse than doubtful authority of a few extinct and exploded statutes, which stand repealed in your code by the voice of the people speaking through a Convention of their choice,—the acts of which they have also confirmed by their solemn votes? May it please your honors, I cannot believe that such will be your decision. I have too much faith in my kind for this. I feel that New Jersey will hold up the hands of this Court in coming to the support of freedom and of free institutions in her borders.

Never can the act be regretted. Conscience will approve it. Time will approve it. Death-bed reflection will approve it. Eternity and heaven will approve it. It has been long, too long postponed. But it is not too late to come up, manlike, statesmanlike, patriotlike, godlike, and declare that it is indeed true, in the language of your now organic law, that within all your pleasant borders, at least, all mankind are, by nature, entitled to perfect freedom in the possession of life, liberty, and the pursuit of happiness!

After Mr. STEWART resumed his seat, there was a pause of some duration: The scene was quite impressive. The auditory was numerous and highly respectable, and such was the impressiveness with which the closing appeal of the advocate for freedom was delivered, that no one seemed to like to be the first to break the spell his eloquence had cast upon the assembly. At length, the Bench arose, the Chief Justice adjourned the Court until to-morrow morning, and the hearing of the cases which have occupied our attention for these two days past was terminated.

The decisions therein will probably be given some time during the next term of the Court.





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